IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-767

UNITED STATES OF AMERICA,
Appellant,

—v.—

THE CONNECTICUT NATIONAL BANK, THE FIRST NEW HAVEN NATIONAL BANK, AND JAMES E. SMITH, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

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11/ 1/72	Court trial continues.
11/ 2/72	Court trial continues.
11/ 7/72	Court trial continues.
11/ 8/72	Court trial continues.
11/ 9/72	Court trial continues.
11/15/72	Court trial continues. Intervenor rests at 11:20 A.M. Defendants rest at 11:27 A.M. with leave to reopen. 1 Govt. rebuttal witness sworn and testified. Plaintiff rests in rebuttal at 2:50 P.M. All parties rest at 2:50 P.M.
2/26/73	Court trial continues. Oral Arguments.
6/22/73	Memorandum of Decision, Findings of Fact and Conclusions of Law, filed and entered. Judgment will be entered against the plaintiff and in favor of the defendants and the intervenor.
7/16/73	Judgment entered dismissing this action on the merits and that defendants, The Connecticut National Bank and The First New Haven National Bank, recover of the plaintiff, U.S.A., their costs of action.
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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK,

Defendants.

Civil Action No. 14583

Filed:

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 38 Stat. 731, as amended (15 U.S.C. § 18).

2. Each of the defendants has its principal place of business, transacts business, and is found within the District of Connecticut.

II

THE DEFENDANTS

3. The Connecticut National Bank (hereinafter referred to as "Connecticut National") is made a defendant herein. Connecticut National is a banking association organized under the laws of the United States of America and maintains its principal place of business in Bridgeport, Fairfield County, Connecticut.

4. The First New Haven National Bank (hereinafter referred to as "First New Haven") is made a defendant herein. First New Haven is a banking association organized under the laws of the United States of America and maintains its principal place of business in New Haven, New Haven County, Connecticut.

III

TRADE AND COMMERCE

5. Commercial banks fill an essential and unique role in the nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrators of the nation's check payment system. Through the making of loans to individuals and businesses,

commercial banks supply a significant part of the credit requirements of the nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills, and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of cashier's checks and drafts on correspondent banks, the purchase or sale of securities for customers, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

6. Customers of Connecticut National and First New Haven have regularly utilized interstate communications, including the mails, telephone and telegraph, to carry on their business with, apply for, and obtain the services provided by these banks. Connecticut National and First New Haven have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with customers and with other banks located in states other than Connecticut. Connecticut National and First New Haven are each engaged in interstate commerce.

7. Connecticut National is the fourth largest commercial bank in Connecticut. It operates 48 banking offices, including ten in Bridgeport, 29 in Fairfield County outside of Bridgeport, eight in New Haven County, and one in Litchfield County. On December 31, 1970, Connecticut National held total assets of about $398 million, total deposits of about $354 million (including IPC demand deposits of about

$154 million), and total loans and discounts of about $228 million. Connecticut National holds about 7 percent of the deposits held by commercial banks in Connecticut.

8. First New Haven is the seventh largest commercial bank in Connecticut. It operates a total of 21 offices, all in New Haven County, including eight in New Haven City. On December 31, 1970, First New Haven held total assets of about $315 million, total deposits of about $261 million (including IPC demand deposits of about $145 million), and total loans and discounts of about $185 million. First New Haven holds about 5 percent of the deposits held by commercial banks in Connecticut.

9. The State of Connecticut is heavily industrialized, with a large white collar population and relatively little farming. Connecticut's population grew at a rate of 17.9 percent during the 1960's, the highest rate of growth in the northeast section of the United States. The state ranks first in the nation in per capita personal income and per capita value added by manufacture. Bridgeport and New Haven are the second and third largest cities in the state, respectively. Bridgeport is the leading industrial center in the state, and there is considerable manufacturing in the New Haven area also. Population in the Bridgeport and New Haven Standard Metropolitan Statistical Areas ("SMSAs") increased by 15 percent and 11 percent, respectively, in the 1960's. Population in Fairfield and New Haven Counties increased 21 percent and 13 percent, respectively, during the same period.

10. The cities of Bridgeport and New Haven are about 20 miles apart, connected by good highways. Several offices of both banks are located in the area between the two cities. Among these offices are five offices of First New Haven and three of Connecticut National located in close proximity to each other in the towns of Orange, Milford, Derby and Ansonia. Connecticut National and First New Haven are significant competitors of each other and of other commercial banks within this four-town area. Commercial banking in this area is highly concentrated. First New Haven and Connecticut National hold about 39 percent and 20 percent, the first and second largest shares, respectively, of the total deposits held by all commercial banking offices in the area. If the proposed consolidation between Connecticut National and First New Haven is consummated, the resulting bank would hold about 59 percent of the total commercial bank deposits in this area and operate eight of the area's 16 commercial banking offices.

11. Commercial banking in New Haven County is also highly concentrated. First New Haven is the second largest bank headquartered in the county and holds the largest share, about 24 percent, of all deposits in New Haven County banking offices. The four largest banks in the county together hold about 68 percent of all such deposits. Connecticut National's eight New Haven County offices hold about 5 percent of all deposits held in the county. If the proposed consolidation between Connecticut National and First New Haven is consummated, the resulting bank would hold

about 29 percent of all deposits in New Haven County banking offices, and the share of the four leading banks in the county would increase from 68 percent to about 73 percent.

12. Commercial banking in the New Haven SMSA, consisting of New Haven and ten nearby towns, is also highly concentrated. First New Haven holds the largest share, about 40 percent, of commercial bank deposits in the SMSA. The two leading banks hold about 69 percent of all such deposits. Connecticut National's one office in Orange, which is within the New Haven SMSA, holds about 1 percent of total SMSA deposits.

13. Connecticut banking law permits statewide de novo branching into any city or town which is not the site of the head office of another bank. Five New Haven County towns in which First New Haven operates offices are presently open to de novo entry by Connecticut National. Four of these five towns are in the New Haven SMSA and three of the towns, East Haven, West Haven and Branford, are adjacent or very close to New Haven and would provide good locations from which Connecticut National could compete more effectively in the New Haven area.

14. Connecticut National has the capability and incentive to expand further into the New Haven SMSA by de novo branching into those towns which are open to such branching or by acquisition of one of the four small banks which operate offices in towns adjacent to New Haven. Connecticut National could also enter New Haven City by forming a multi-bank holding company and chartering a de novo bank there.

15. Commercial banking in the Bridgeport SMSA is highly concentrated. Connecticut National holds about 40 percent, the leading share, of total deposits in the Bridgeport SMSA. The two leading banks hold about 77 percent of all such deposits. First New Haven's three offices in Milford, New Haven County (which is in the Bridgeport SMSA) hold about 6 percent of total deposits in the Bridgeport SMSA.

16. Twelve towns in which Connecticut National operates offices are presently open to de novo branching by First New Haven, including all of the towns in the Bridgeport SMSA except the City of Bridgeport. Most of these towns are adjacent or very close to Bridgeport and would provide good locations from which First New Haven could compete more effectively in the Bridgeport area.

17. First New Haven has the capability and incentive to expand further into the Bridgeport SMSA by de novo branching. First New Haven could also enter Bridgeport City by forming a multi-bank holding company and chartering a de novo bank there.

18. Presently, 139 of Connecticut's 177 towns and cities, containing a total population of about 1,550,000, are open to de novo branching by outside banks. In recent years, the larger banks in the state have begun to expand into areas more distant from their home offices. Given the small size of the state and the ease of movement between major urban centers, it can be expected that regional and statewide banking systems will be established. Connecticut

National and First New Haven each have the capability and incentive to independently expand into such a system.

19. The proposed consolidation between Connecticut National and First New Haven is part of a recent trend toward mergers of leading banks in different parts of Connecticut. The third largest bank in the state is the result of a merger of leading banks in New Haven and Stamford, and the seventh and 13th largest commercial banks in the state, located in Bridgeport and Waterbury, respectively, recently merged to form the sixth largest bank in the state.

IV

OFFENSE

20. Defendants Connecticut National and First New Haven entered into an agreement on or about November 19, 1970, which will result in the consolidation of Connecticut National and First New Haven under the charter of First New Haven and with the title The First Connecticut National Bank. The Comptroller of the Currency approved the proposed consolidation on July 26, 1971.

21. The effect of the consolidation described in paragraph 20 above may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) actual and potential competition between Connecticut National and First New Haven in the Bridgeport and New Haven SMSAs, in New Haven County and in the Orange-Milford-Derby-Ansonia area of Connecticut will be

permanently eliminated;

(b) concentration in commercial banking in the Bridgeport and New Haven SMSAs, in New Haven County and in the Orange-Milford-Derby-Ansonia area of Connecticut will be significantly increased;

(c) Connecticut National will be eliminated as a potential substantial competitive factor in the New Haven area and in those parts of New Haven County where it presently does not operate commercial banking offices in competition with those of First New Haven;

(d) First New Haven will be eliminated as a potential substantial competitive factor in the Bridgeport area and in those parts of Fairfield and New Haven Counties where it presently does not operate commercial banking offices in competition with those of Connecticut National;

(e) the number of banks in Connecticut capable of independently expanding into statewide banking systems will be reduced;

(f) both Connecticut National and First New Haven will be entrenched in their dominant positions in many local markets; and

(g) mergers and consolidations between other leading banks in Connecticut may be fostered, resulting in the concentration of banking

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Plaintiff, -V- THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, Defendants.	CIVIL ACTION No. 14583 ANSWER

Defendants, THE CONNECTICUT NATIONAL BANK ("CONNECTICUT NATIONAL") and THE FIRST NEW HAVEN NATIONAL BANK ("FIRST NEW HAVEN"), by their attorneys, make the following answer to plaintiff's complaint:

1. Defendants deny so much of Paragraph 1 as alleges that their proposed consolidation would violate Section 7 of the Clayton Act, 38 Stat. 731, as amended. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 1.

2. The allegations contained in Paragraph 2 are admitted.

3. The allegations contained in Paragraph 3 are admitted.

4. The allegations contained in Paragraph 4 are admitted.

5. Defendants admit so much of Paragraph 5 as alleges tha the activities and services described constitute, in general, t activities and services of commercial banks, but deny (a) that

... TO ADMINISTRATIVE SECTION

such activities and services are performed by all commercial banks and (b) that such activities and services are performed uniquely by commercial banks in Connecticut. Defendants are without sufficient knowledge of information to form a belief as to the truth of the remaining allegations of Paragraph 5.

6. The allegations contained in Paragraph 6 are admitted.

7. In answer to Paragraph 7, defendants deny that defendant Connecticut National is the fourth largest commercial bank "in" Connecticut. Further answering, defendants allege that there are more than three commercial banks actively competing "in" Connecticut that are larger than Connecticut National and that Connecticut National is the fourth largest commercial bank headquartered in Connecticut. Defendants admit the allegations stated in the second and third sentences of Paragraph 7. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations stated in the fourth sentence of Paragraph 7.

8. In answer to Paragraph 8, defendants deny that defendant First New Haven is the seventh largest commercial bank "in" Connecticut. Further answering, defendants allege that there are more than six commercial banks actively competing "in" Connecticut that are larger than First New Haven and that First New Haven is the seventh largest commercial bank headquartered in Connecticut. Defendants admit the allegations stated in the second and third sentences of Paragraph 8. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations stated in the fourth sentence of Paragraph 8.

9. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 9.

10. In answer to Paragraph 10, defendants admit that Bridgeport and New Haven are about 20 miles apart, and that several offices of both banks are located in the area between the two cities. Defendants deny that the "four-town area" is a proper or relevant area for the purposes of this case. Answering further, defendants allege that they are not in significant competition with each other in any section of the country. Defendants deny each and every other remaining allegation in Paragraph 10.

11. Defendants deny so much of Paragraph 11 as alleges that First New Haven is the second largest bank headquartered in New Haven County, and defendants deny that New Haven County is a proper or relevant area for the purposes of this case. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 11, except that it is denied that First New Haven and Connecticut National hold the alleged approximate percentage shares of all deposits in New Haven County banking offices.

12. Defendants deny so much of Paragraph 12 as alleges that the New Haven SMSA is a proper or relevant area for the purposes of this case. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 12, except that it is denied that First New Haven and Connecticut National hold the alleged approximate percentage shares of commercial bank deposits in the New Haven SM

13. Defendants admit the allegations in the first sentence of Paragraph 13 and, answering further, defendants allege that de novo branching into a city or town in Connecticut which is not the site of the head office of another bank is only permitted by the appropriate state and federal bank regulatory authorities upon a showing by the applicant bank that additional bank office facilities are needed and would be supported by the local economy, a showing that can not readily be made with respect to most of the cities and towns in Connecticut where de novo branching is not barred under Connecticut law. Defendants deny that any town or city in Connecticut is "open" to de novo branching entry by Connecticut National and deny each and every other remaining allegation in Paragraph 13. Answering further, defendants allege that no city or town in Connecticut is "open" as a matter of choice to de novo branching by Connecticut National which would face serious financial and regulatory obstacles in attempting to enter by de novo branching into any town in which First New Haven now operates an office.

14. Defendants deny each and every allegation in Paragraph 14.

15. Defendants deny so much of Paragraph 15 as alleges that the Bridgeport SMSA is a proper or relevant area for the purposes of this case. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 15, except that it is denied that Connecticut National and First New Haven hold the alleged approximate percentage shares of commercial bank deposits in the Bridgeport SMSA.

16. Defendants deny so much of Paragraph 16 as alleges that any towns in which Connecticut National operates offices are presently "open" to de novo branching by First New Haven. Answering further, defendants allege that any attempt by First New Haven to enter by de novo branching into any towns in which Connecticut National operates offices would face serious financial and regulatory obstacles. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 16.

17. Defendants deny each and every allegation in Paragraph 17.

18. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of Paragraph 18, except that it is denied that 139 of Connecticut's 177 towns are "open" to de novo branching by outside banks. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of Paragraph 18. Defendants deny each and every other allegation in Paragraph 18.

19. Defendants deny so much of Paragraph 19 as alleges that the proposed consolidation is part of a recent trend towards merger of leading banks in different parts of Connecticut. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations stated in Paragraph 19 except that defendants admit that the Federal Deposit Insurance Corporation on June 12, 1969 approved the merger of The Fairfield County Trust Company (headquartered in Stamford) and The Union and New Haven Trust Company (headquartered in New Haven) under the

charter of Union and New Haven Trust Company and with the title "Union Trust Company," that said merger created the third largest commercial bank headquartered in Connecticut and that plaintiff herein interposed no proceeding to enjoin that merger within the prescribed statutory period.

20. Defendants admit the allegations in Paragraph 20.

21. Defendants deny each and every allegation in Paragraph 21.

Affirmative Defense

As and for a separate defense, defendants state that the anti-competitive effects which it is alleged may result from their proposed consolidation are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

The Defendant,
The First New Haven National Bank

By _____
Richard G. Bell
Tyler, Cooper, Grant, Bowerman & Keefe
205 Church Street
New Haven, Connecticut
Its Attorneys

The Defendant,
The Connecticut National Bank

By _____
Huntley Stone
Pullman, Comley, Bradley & Reeves
855 Main Street
Bridgeport, Connecticut
Its Attorneys

Dated: September 11, 1971

FILED
Oct 29 9 05 AM '71
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,)

Plaintiff,)

v.) Civil Action No. 14583

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK,)

Defendants,)

ORDER

The Notice of Motion and Motion of William B. Camp, Comptroller of the Currency, to Intervene as a Party to this action and for additional time having been filed with the Court, and the Court having considered the same.

IT IS HEREBY ORDERED that the Motion of the Comptroller of the Currency is granted pursuant to Rule 24(a) (1) of the Federal Rules of Civil Procedure and the provisions of Section 1828(c) (7) (D) of Title 12, United States Code, and thirty days additional time to answer or otherwise proceed is granted.

ORDERED THIS 19th day of October 1971.

Robert C. Zampano
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Civil Action No. 14583
THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, Defendants,	)	
and	)	
WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, Intervenor.	)	

INTERVENOR'S ANSWER

Intervenor, William B. Camp, Comptroller of the Currency, by his attorney, answers the Complaint herein, as follows:

1. Intervenor admits that plaintiff purports to bring this action under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. §25); however, Intervenor alleges and avers that the standards to be applied by the Court in this case, are those set forth in 12 U.S.C. §1828(c), as amended by the Act of Congress of February 21, 1966, P.L. 89-356, 80 Stat. 7, commonly known as the Bank Merger Act of 1966.

2. Intervenor admits the allegations in paragraphs 2, 3 and 4 of the Complaint.

3. Intervenor admits the allegations of paragraph 5 of the Complaint to the effect that commercial banks fill a role in the nation's economy and that some commercial banks perform the functions outlined in paragraph 5, although not all, but denies all other allegations in said paragraph and any implication

therein that commercial banks are unique in offering financial services and denies any implication therein that commercial banks are not in competition with other financial and lending institutions.

4. Intervenor, with regard to paragraph 6 of the Complaint, admits the allegations except that it denies every customer of each bank regularly utilizes interstate communications, including the mails, telephone and telegraph to carry on his business with or to apply for and obtain the services of either bank.

5. Intervenor denies the allegation in paragraph 7 of the Complaint that Connecticut National is the fourth largest commercial bank "in Connecticut". Intervenor admits the allegations in the second and third sentences of the paragraph and alleges it is without sufficient information to form a belief as to the truth of the last sentence in the paragraph.

6. Intervenor denies the allegation in paragraph 8 of the Complaint that defendant, First New Haven, is the seventh largest commercial bank "in Connecticut". Intervenor admits the allegations contained in the second and third sentences of the paragraph and alleges it is without sufficient information to form a belief as to the truth of the last sentence in the paragraph.

7. Intervenor is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

8. Intervenor denies all the allegations contained in paragraph 10 except that it admits that several offices of defendant banks are located in the area between Bridgeport and New Haven and

that these two cities are about twenty miles apart. Intervenor specifically denies Connecticut National and First New Haven are significant competitors of each other in any section of the country and specifically denies that combining of the four separate and distinct towns of Derby, Ansonia, Milford and Orange makes them a section of the country or relevant geographic market area for this Section 7 case.

9. Intervenor denies the allegation in paragraph 11 of the Complaint that commercial banking in New Haven County is highly concentrated and that First New Haven is the second largest commercial bank headquartered in New Haven County. Intervenor denies that New Haven County is the proper or relevant geographic area for the purposes of this case, and denies that First New Haven and Connecticut National hold the alleged percentage share of deposits in New Haven County banking offices. Intervenor is without sufficient knowledge to form a belief as to the truth of the remaining allegations in the paragraph.

10. Intervenor denies the allegation in paragraph 12 of the Complaint that banking in the New Haven SMSA is highly concentrated and that the New Haven SMSA is a proper or relevant area for the purposesof this case. Intervenor denies that First New Haven and Connecticut National hold the alleged percentage share of deposits in the New Haven SMSA. Intervenor is without sufficient knowledge to form a belief as to the truth of the remaining allegations in the paragraph.

11. Intervenor admits the allegation in paragraph 13 of the Complaint that Connecticut law permits statewide de novo branching

into any city or town which is not the site of the head office of another bank providing either state or federal bank regulatory approval is first applied for and obtained. Intervenor further avers that in the case of Connecticut National, being a national bank, it must first apply to Intervenor and obtain approval from Intervenor before each de novo branch office can legally be opened. Intervenor denies that any city or town is "open" to de novo branch entry by Connecticut National as well as every other remaining allegation in the paragraph.

12. Intervenor denies the allegations in paragraph 14 of the Complaint.

13. Intervenor denies the allegation in paragraph 15 of the Complaint that banking in the Bridgeport SMSA is highly concentrated and that the Bridgeport SMSA is a proper or relevant area for the purposes of this case. Intervenor denies that Connecticut National and First New Haven hold the alleged percentage shares of deposits in the Bridgeport SMSA. Intervenor is without sufficient information to form a belief as to the truth of the remaining allegations in the paragraph.

14. Intervenor denies the allegations in paragraph 16 of the Complaint that there are any towns in which Connecticut National operates an office that are "open" to de novo branching by First New Haven. Intervenor avers that in the case of First New Haven, being a national bank, it must first apply to Intervenor and obtain approval from Intervenor before any de novo branch office could be legally opened in any town in Connecticut. Intervenor is without sufficient knowledge to form a belief as to the truth of the remaining allegations in the paragraph.

15. Intervenor denies the allegations in paragraph 17 of the Complaint.

16. Intervenor denies the allegation in paragraph 18 of the Complaint that 139 of Connecticut's 277 towns and cities containing 1,550,000 people are "open" to de novo branching by outside banks. Intervenor is without sufficient information to form a belief as to the truth of the allegation contained in the second sentence of the paragraph. Intervenor denies the remaining allegations contained in the paragraph.

17. Intervenor denies the allegation in paragraph 19 of the Complaint that this proposed consolidation is part of a recent trend toward mergers of leading banks in different parts of Connecticut. Intervenor is without sufficient knowledge to form a belief as to the truth of the remaining allegations in the paragraph.

18. Intervenor admits the allegation contained in paragraph 20 of the Complaint.

19. Intervenor denies each and every allegation contained in paragraph 21(a) through (g) of the Complaint.

AFFIRMATIVE DEFENSE

Intervenor alleges that the Bank Merger Act of 1966, 80 Stat. 7, 12 U.S.C. §1828(c), is an affirmative defense to this action. Said Act provides an affirmative defense in this case because any anti-competitive effects resulting from the proposed consolidation (the existence or substantiality of which is denied) are clearly

outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the community to be served. [12 U.S.C. §1828(c)(5)(B)].

Charles H. McEnerney Jr.

CHARLES H. McENERNEY, JR.
Attorney for William B. Camp,
Comptroller of the Currency
Treasury Department
15th and Pennsylvania Ave., N
Washington, D. C. 20220
Area Code 202-964-2154

Dated: November 19, 1971

Interrogatory 18

With further respect to Paragraph 21 of the Complaint:

A. State the "actual . . . competition between Connecticut National and First New Haven . . ." referred to in subparagraph (a), describe the amount of such competition and state whether plaintiff contends that such "actual competition" is substantial.

B. State the "potential competition" referred to in subparagraph (a), state whether the amount of such competition can be quantified and, if so, state such amount and whether plaintiff contends that such "potential competition" is substantial.

C. Describe in detail each market, submarket, or section of the country in which plaintiff contends that "potential competition . . . will be permanently eliminated."

D. Explain how "potential competition" between Connecticut National and First New Haven will be eliminated.

E. State whether plaintiff contends that the more relevant market, submarket, or section of the country for the purposes of this case is (1) the Bridgeport SMSA; (2) the New Haven SMSA; (3) Fairfield County; (4) New Haven County; (5) the City of Orange; (6) the City of Milford; (7) the City of Derby; (8) the City of Ansonia; (9) the City of Bridgeport; (10) the City of New Haven; or (11) any combination of any of the preceding.

F. Define with particularity what plaintiff contends is the "Orange-Milford-Derby-Ansonia area;" (2) the "New Haven area" and (3) the "Bridgeport area".

G. State whether plaintiff contends that potential competition in commercial banking between defendants will be permanently eliminated in any section of the country other than in New Haven County and in the City of New Haven, in Fairfield County and in the City of Bridgeport, and in the Bridgeport and New Haven SMSA's. If plaintiff does so contend, describe any such other section of the country and state the facts upon which it is contended that potential competition therein will be permanently eliminated.

H. State the manner in which (1) "Connecticut National . . . [is] a potential substantial competitive factor in the New Haven area and in those parts of New Haven County where it presently does not operate commercial

banking offices in competition with those of First New Haven", and the manner in which (2) First New Haven . . . [is] a potential substantial competitive factor in the Bridgeport area and in those parts of Fairfield and New Haven Counties where it presently does not operate commercial banking offices in competition with those of Connecticut National."

I. With respect to the allegations in subparagraph (c), state what plaintiff means by "substantial", identify "those parts of New Haven County where [Connecticut National] does not operate commercial banking offices in competition with those of First New Haven," and state whether "those parts" constitute a separate market, submarket, or section of the country.

J. With respect to the allegations of subparagraph (d), state what plaintiff means by "substantial", identify "those parts of Fairfield and New Haven Counties where [First New Haven] presently does not operate commercial banking offices in competition with those of Connecticut National", and state whether "those parts" constitute a separate market, submarket, or section of the country.

K. State whether the proposed consolidation will increase competition (1) with any other bank or other financial institution located in any market, submarket, or section of the country relevant to this proceeding; or (2) with any other bank of other financial institution now serving customers in any market, submarket, or section of the country relevant to this proceeding from offices located outside said market, submarket, or section of the country.

L. With respect to the allegations in subparagraph (e), state the number and identity of banks in Connecticut presently capable of independently expanding into statewide banking systems and state the number and identity of banks in Connecticut capable of independently expanding into statewide banking systems in the foreseeable future.

M. With respect to the allegations in subparagraph (f), state what plaintiff means by (1) "entrenched" (2) "dominant" positions and (3) identify each of the "many local markets" in which Connecticut National and First New Haven "will be entrenched in their dominant positions."

N. Identify all "mergers or acquisitions between other leading banks in Connecticut [which] may be fostered" by the merger of defendants, state the amount of "concentration of banking resources in the state" plaintiff contends may result, state the number of diverse "banking choices" plaintiff contends should be preserved in the state, and describe how leading Connecticut bank mergers promote "parallel policies among leading banks in local markets."

O. State what plaintiff contends is the minimum number of offices, assets, loans and deposits for a bank independently to expand into a statewide banking system in Connecticut.

P. Describe the degree of concentration in commercial banks in the Cities of Bridgeport, New Haven, New London and Hartford and in the State of Connecticut and identify the banks operating in such areas and the percentage of offices, assets, loans and deposits held by each bank.

Q. State whether plaintiff contends that any of the degrees of concentration described in P, above, will be increased or decreased as a result of the proposed consolidation between defendants and, if so, state what plaintiff contends will be the resulting degree of concentration in the Cities of Bridgeport, New Haven, New London and Hartford and in the State of Connecticut.

R. State whether plaintiff contends that defendants or either of them do not face significant competition from banks located outside of the State of Connecticut.

Answer to Interrogatory 18

A. See answer to Interrogatory 5.

B. "Potential competition" refers to that competition which exists because of the potentiality that defendants would establish offices in closer proximity to each other, through establishment of *de novo* branches or banks or merger with a smaller bank, and thereby come into actual competition with each other. Such potentiality of entry is based upon defendants' capability to enter as a source of significant new competition as indicated by defendants' size, financial resources and demonstrated willingness to expand by *de novo* branching and/or merger with smaller banks, and incentive to enter as indicated by the significant economic growth of the markets involved, as well as

the geographic proximity and economic similarity of these markets. The effect of the elimination of this potential competition would be to eliminate the present influence which defendants' ability to enter the relevant markets they are not now serving has on the competitive behavior of banks presently in these markets, and to eliminate defendants as a source of future deconcentration in these markets.

Plaintiff contends that "potential competition" referred to in subparagraph (a) is substantial. The "amount" of such potential competition cannot be described by one number, but potential competition can be identified and quantified by examination of those factors described above.

C. Potential competition will be eliminated in the following areas, which are described in answer to Interrogatory 1A:

New Haven SMSA, Bridgeport SMSA, Bristol SMSA, Danbury SMSA, Hartford SMSA, Meriden SMSA, New Britain SMSA, New London-Groton-Norwich SMSA, Norwalk SMSA, Stamford SMSA, Waterbury SMSA and the State of Connecticut.

D. Connecticut National and First New Haven are potential entrants in parts of each relevant market identified in C, above, in which they do not operate offices. Thus potential competition exists between defendants in such markets. This potential competition, which is described in B, above, would be eliminated by the consolidation.

E. Plaintiff makes no contentions regarding a "most relevant market." Each market described in answer to Interrogatory 1A is a relevant market.

F. "Orange-Milford-Derby-Ansonia area" is described in answer to Interrogatory 1A. The "New Haven area" and the "Bridgeport area" refer to the respective SMSA's, which are also described in answer to Interrogatory 1A.

G. Yes. These sections of the country are described in answer to C, above. Potential competition will be eliminated between defendants for the reasons stated in answer to B and D, above.

H. Defendants are potential entrants into the markets described in answer to C, above, by establishing *de novo* branches and banks or by merger with "foothold" banks.

I. Plaintiff used "substantial" as that term is used by courts in interpreting Section 7 of the Clayton Act, and as summarizing contentions in the complaint and answers to these interrogatories which describe the effect on potential competition resulting from the elimination of Connecticut National as a potential entrant.

"Those parts of New Haven County . . ." include the New Haven SMSA, Waterbury SMSA and Meriden SMSA, which are wholly or partly within New Haven County, and which constitute separate markets and sections of the country.

J. Plaintiff used "substantial" as that term is used by courts in interpreting Section 7 of the Clayton Act, and as summarizing contentions in the complaint and answers to these interrogatories which describe the effect on potential competition resulting from the elimination of First New Haven as a potential entrant.

"Those parts of Fairfield and New Haven Counties . . ." include the Bridgeport SMSA, Norwalk SMSA, Stamford SMSA, Waterbury SMSA and Meriden SMSA, which are wholly or partly within those counties, and which constitute separate markets and sections of the country.

K. (1) No.

(2) No.

L. The eight banks and banking organizations capable of independently expanding into statewide banking systems are City National Bank of Connecticut, Colonial Bank & Trust Co., Connecticut National Bank, First Connecticut Bancorporation, First New Haven National Bank, State National Bank of Connecticut, Union Trust Co. and Second National Bank of New Haven. Hartford National Bank and Connecticut Bank & Trust Co., which plaintiff considers to be statewide banks, are capable of expanding further within the state.

Plaintiff is unsure of what defendant means by "foreseeable future," but makes no contentions regarding this time period.

M. (1) "Entrenched" means that barriers to entry will be raised or maintained, defendants' ability to maintain or increase their dominant market positions will be enhanced and augmented, and competition will be lessened or inhibited.

(2) "Dominant" refers to the fact that defendants hold approximately 40% of deposits in the Bridgeport and New Haven SMSA's, the greatest market share of any bank operating in those markets.

(3) Bridgeport SMSA, New Haven SMSA, Orange-Milford-Derby Ansonia area.

N. Plaintiff contends that mergers and consolidations between other leading banks in Connecticut may be fostered, but does not contend that any particular mergers or acquisitions between specific named banks may be fostered, or that any specific amount of concentration may result. Plaintiff contends that since all the relevant geographic areas in this action are highly concentrated, all the "diversity in banking choices" presently available should be preserved and, in local markets, enhanced. Mergers of leading banks in local markets would result in a few very large banks in the state, each holding leading positions in the several local markets in the state. These few state leaders, facing each other in commonly linked oligopolistic markets, will be encouraged to pursue parallel practices in disregard of local competition conditions. Such merger of leading banks in different markets would eliminate potential competition in the several local markets in the state, which effects, taken together, would have a substantially adverse effect on potential competition in the State of Connecticut.

O. In answer to Interrogatory 15, plaintiff stated that regional and statewide systems held $200 million or more in deposits. Plaintiff makes no other contentions regarding the minimum number of offices, assets, deposits and loans for a bank independently to expand into a statewide banking system in Connecticut.

P. See answer to Interrogatory 7B for the degree of concentration in each relevant market.

Q. Plaintiff does not contend that concentration in these cities will increase or decrease.

In the State of Connecticut as of December 31, 1971, the share of total deposits held by the five largest banks would increase from 61% to 66%, and by the ten largest banking organizations from 83% to 85%.

R. Plaintiff contends that neither defendant faces significant competition in the line of commerce of commercial banking from banks located outside of Connecticut.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR.

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 10th, 1972

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

Appearances:

UNITED STATES DEPARTMENT OF JUSTICE
Antitrust Division
Washington, D. C.
By: JOHN W. CLARK, Trial Attorney
FRANK N. BENTKOVER, Trial Attorney
KELLEY V. REA, Trial Attorney

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JOHN BOYER, Esq.
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By: HUNTLY STONE, Esq.

Messrs. TYLER, COOPER, GRANT, BOWERMAN & KEEFE
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New Haven, Connecticut
By: RICHARD G. BELL, Esq.

UNITED STATES TREASURY DEPARTMENT
15th and Pennsylvania Avenue, N.W.
Washington, D. C.
By: CHARLES H. McENERNEY, Jr., Esq.
FORD BARRETT, Esq.

[3] THE COURT: In the matter of United States of America versus the Connecticut National Bank and the First New Haven National Bank, Civil No. 14,583, are the parties ready?

MR. REYCRAFT: Ready, your Honor.

MR. CLARK: Ready, your Honor.

THE COURT: The record should note that the Court has met with counsel on several occasions, including a formal pretrial, and certain matters have been agreed upon, including the lead counsel for each side, and various other trial housekeeping matters.

In addition, the Court has been informed that each side wishes to present comprehensive trial briefs following the trial with findings of fact and legal memoranda.

Also pending for business this morning is the petition of George D. Reycraft to be admitted to the Bar in this Court, and I will certainly grant that. So, therefore, the petition of George D. Reycraft to be admitted for admission to the Bar of this Court is granted.

The first thing we ought to do is have him sworn in for general admission to this Court by the clerk. Pleasure to welcome you to the Bar of this Court, Mr. Reycraft.

[4] The Court has also been informed that the parties have been meeting and have been agreeing upon certain procedures, which the Court appreciates. However, there is one stipulation that I believe should be read into the record, and I will do so now. "It is hereby stipulated by the parties that the attached documents marked as Plaintiff's Exhibit 1 through 115 for Identification, Defendants' Exhibits 1 through 52 for Identification, and Inter-

venor's Exhibits 1 and 2 for Identification may be admitted into evidence subject to objection as to relevancy or materiality. The parties retain all rights to correct mathematical or computational errors in their own exhibits and to point out such errors in the opposing parties' exhibits and retain all rights to attack the weight or characterization of the opposing parties' exhibits."

Very well. I believe the government wishes to make an opening statement. I'll hear that at this time.

MR. CLARK: May it please the Court, plaintiff's case consists of more than 100 exhibits and testimony by two expert witnesses. Our approach will be objective, directed toward an analysis of market structure as defined by generally accepted economic standards.

We deal in such relatively unexciting concepts [5] as concentration ratios and merger trends. We so not necessarily by choice, because the Supreme Court has told us that this is the way that mergers must be analyzed under the applicable statute. Dry and impersonal though the numbers may be, they are the stuff of these cases. Thus, though our case will not take a long time to introduce, it is, indeed a substantial one.

Section 7 of the Clayton Act provides that a merger or acquisition shall not be permitted, and I quote, "Where, in any line of commerce, in any section of the country, the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly."

This rather broad general language has been interpreted many times by the Supreme Court and the general result has been, not surprisingly, that the statute means what it says. The unmistakeable message is that Section 7 does not require certainty, it does not require exactitude, it does require that a merger shall not be permitted if its effect on competition, actual or potential, may be substantial.

As the Supreme Court said in Brownshoe, one of the early cases under the statute, and I quote, "It is apparent that a keystone in the erection of a barrier to what Congress saw was the rising tide of economic [6] concentration was its provision of authority for arresting mergers at a time when the trend to a lessening of competition in a line of commerce was still in its incipiency,"

Congress saw the process of concentration in American business as a dynamic force, it sought to assure the Federal Trade Commission and the courts the procedure to break this force at its outset and before it gathered momentum.

Neither, of course, does Section 7 deal in ephemeral possibilities, but I should like to emphasize the significant and distinguishing factor relating to Section 7, it is prospective, it is designed to prevent future consequences for a perceived set of facts, because an assessment of the future is necessarily inexact, the Supreme Court in the several cases it has decided under Section 6 has set down standards consistent with economic theory which give a significant degree of certainty to Section 7.

In Philadelphia National Bank, a leading case under Section 6, at 374 U.S.—approximately 360—the Supreme Court said: we must be alert to the danger of subverting congressional intent by permitting a too broad economic investigation. And so, in any case in which it is possible without doing violence to the congressional objective embodied in Section 7, [7] to simplify the test of illegality, the courts ought to do so in the interest of sound and practical judicial administration.

This intense congressional concern warrants dispensing in certain cases with elaborate proof of market structure, market behavior or probable anticompetitive effects.

I now turn to these standards which the Supreme Court has established as they relate to this proposed consolidation. Implicit in the test of the effect of any merger or consolidation is the definition of the appropriate framework within which the merger is to be viewed. There are two parameters, product and geographic, or in the words of the statutes: line of commerce and section of the country.

To quote again from Section 7, "In any line of commerce, in any section of the country." This implies that more than one may exist, and so the Supreme Court has held. The Supreme Court has also held, and plaintiff contends in this case, that commercial banking is a line of commerce.

In the Philadelphia case in 1963 and in the Phillips-

burg case, another bank merger action decided recently in 1970, the Court held, that the unique cluster of products and services which are offered by [8] commercial banks constitutes a line of commerce.

This is now very nearly a rule of law. Commercial banks are unique. That is simply beyond dispute, other financial institutions offer some services similar to those offered by commercial banks.

In Connecticut this is true of mutual savings banks. There is some competition between commercial banks and mutual savings banks as to these services. Just as there was between mutual savings banks and commercial banks in Philadelphia, and savings and loan associations and commercial banks in Phillipsburg.

The Supreme Court expressly recognized this in Phillipsburg, but held that because of the uniqueness of the package of services, commercial banking was a line of commerce. And so it is in Connecticut.

Definition of a section of the country is one of the more thorny problems in this case. The Supreme Court has held that the government need not prove that one section of the country is most appropriate. Once again, Section 7 says: any section of the country. It is appropriate to offer more than one section of the country, and plaintiff has done so, it is well established, as noted by the Supreme Court in Philadelphia and Phillipsburg, that convenience is a significant factor in commercial banking. Bank [9] customers, except for the very largest, tend not to travel great distances for banking services. Thus, the location of a bank's offices determines to a large extent the bank's service area. But definition of a banking market must also take into account bank customers, where they live, where they work, or in the case of business, where that place of business is. This is why plaintiff contends that the standard metropolitan statistical areas, or SMSAs, in Connecticut are appropriate sections of the country.

We will show that in MSMA is a self-contained labor market where the majority of its residents both live and work. Given the significance of convenience in banking and given the fact that the leading banks in the MSMAs,

including Bridgeport and New Haven, operate offices throughout the MSMA—approximates a banking market. The evidence will show that each defendant is the leading bank in its own MSMA, it has more deposits in that MSMA than any other commercial bank. These two MSMAs, New Haven and Bridgeport, adjoin each other, and where they join, defendants' offices are close to each other. Specifically in the Orange, Milford, Ansonia and Derby area, offices of defendants' are in direct competition with each other. This is where a competitive [10] overlap exists.

This, too, is an appropriate section of the country consistent with the Supreme Court's holding in Philadelphia, which said, "The proper question to be asked in this case is not where the parties to the merger do business, or even where they compete, but where within the area of competitive overlap the effect of the merger on competition will be direct and immediate."

Finally, plaintiff urges, and defendants apparently agree, that this Court consider the effect of this consolidation on the state as a whole. One can hardly view this proposed consolidation of two of the largest ten banks in the state with branches where the distance between major metropolitan areas are relatively short, without considering the ultimate effect on the state as a whole.

[11] How then, given this line of commerce and these sections of the country are the effects of the consolidation to be measured. Supreme Court decisions are clear by an analysis of market structure and concentration or share of total bank deposits in the market as the accepted measure of market structure. Where existing present competition is eliminated the decisions tell us that by combining the market shares of the two merging partners, one may gauge the effect of the merger. If this technique is employed in the intervening area between the both MSMA, where the two defendants compete we contend the illegality of this consolidation manifests a sizeable increase in concentration clearly a violation of law and the evidence will so prove.

Where defendants are not competing substantially at the present, the process of an analysis is difficult. There the question is whether there is potential competition be-

tween defendants which will be eliminated. The question here is whether the leading bank in Bridgeport and the leading bank in New Haven, the fourth and eighth largest banks in the state, headquartered only twenty-five miles apart in two of the largest cities in the state and each already operating one or a few offices in the other's MSMA at a time [12] when all of the large banks are expanding geographically throughout the state, whether there is potentially competition between these two banks. The answer is practically forced upon us. By every objective standard the answer can only be: of course. There is potential that Connecticut National Bank will enter the New Haven SMSA and compete with First New Haven which is the leading bank there. There is potential that First New Haven will enter the Bridgeport SMSA and compete with Connecticut National Bank which is the leading bank there. Either effect by itself violates Section 7. There is an added affect in these SMSA's; resulting bank would be about twice as large as either bank is now. Each already is the leading bank in its market. At twice the size the resulting bank could entrench these leading positions; other smaller banks may be inhibited in competition when faced with such a large bank already number one.

Further, there is potential that one or both defendants would enter other SMSA's in the state where they are not now operating offices and compete with each other or with other banks in these SMSA's.

Finally, the effect on the state as a whole. The trend is unmistakably towards state-wide banking by the largest banks in the state. How will this come [13] about? By consolidations such as this. In short order the potential for increased competition in the several local markets would be severely diminished. The state would be irrevocably locked into the highly concentrated market structure which now prevails. This is a pivotal case which has ramifications for competition for banking throughout the state. The public policy embodied in Section 7 of The Clayton Act speaks loud and clear: Competition is of paramount importance in the American economy. Where the effect of a merger may be to substantially lessen competition, that merger should not be permitted.

[14] MR. REYCRAFT: If your Honor please, this is, I believe, the seventh time that the Antitrust Division has attempted to proof in a District Court that the effect of an acquisition would violate the Clayton Act because it eliminates potential competition. These cases have been in all cases—these attempts have been in all cases rejected by the Supreme Courts. One of these cases is now on appeal to the Supreme Court and will be argued on October 16th.

One of the cases which have been tried, First National Bank of Jackson, Mississippi, acquisition of the Bank of Greenwood, the District Court found that that merger did not violate the antitrust laws on the government's potential competition theory.

Another case in Mississippi, the Deposit Guarantee National Bank—case following the disposition of the Jackson case, of the First Mississippi case, that was settled by consent between the Department of Justice and the defendants and permitted the merger to take place.

A third case is the First National Bank of Maryland in Baltimore, which acquired the First National Bank of Hartford County. That case was tried in the District Court and the Court found for the defendants in January of 1970, and the merger was consummated.

[15] The Department of Justice made no attempt to appeal either of these cases.

In Idaho, the Idaho First National Bank of Boise acquired Fidelity National Bank in Twin Falls. That case was tried in the District Court and the District Court found for the defendants and that merger has taken place and the Department of Justice did not appeal.

In United Virginia Bank Shares in Richmond, Virginia an acquisition of the People's National Bank was tried in the District Court. That case was tried in October of 1971, and the District Court has now held in favor of the defendant banks.

The First National Bank Corporation of Denver, Colorado applied to acquire the First National Bank of Greeley, Colorado, the District Court rules in favor of the defendants. And that case now—that is the one case which is now on appeal to the Supreme Court.

So that these issues are factual issues which the government is attempting to prove here, and so far uniformly there facts have been found by the Supreme Courts not to sustain the charges which were made.

One of these cases is on appeal to the Supreme [16] Court and will be argued. So it isn't enough for Mr. Clark to read from the Supreme Court's decision of the Philadelphia bank case which did not involve potential competition, it involved direct horizontal competition between two banks whose head offices were directly across the street from each other.

Those banks, the Philadelphia National Bank and the Girard Trust Company, had the right under Pennsylvania law to merge or branch within a four county area, Philadelphia and the three contiguous counties.

The Supreme Court found that that was the relevant geographic market within which to assess the effect of that merger. Those banks would have had a combined share after the merger of about 36% of the banking business in this four-county area. That was direct head-on competition. They were existing competitors with head offices across the street from each other.

That case bears no resemblance to a case involving a bank with a head office in Bridgeport and a bank with a head office in New Haven where the state law prohibits these banks from opening new offices in each other's markets.

As your Honor knows, the—there is head office protection under Connecticut banking law. The First [17] New Haven National Bank cannot open an office in Bridgeport, and the Connecticut National Bank cannot open an office in New Haven under state law.

So that the distinction between the Philadephia National Bank case and this case is like night and day.

Now, Mr. Clark has argued that there is a horizontal effect from this merger in the four-town area which he has carved out, Orange, Derby, Milford and Ansonia. He has said that the two combined banks have a market share in excess of that involved in Philadelphia National Bank case.

Well, we deny that that four-town area is an economic

area. And, of course, Mr. Clark has the burden of proving that it is through some kind of testimony.

But in an effort to resolve the issues in this case, we on behalf of the two banks made a proposal to the Department of Justice, and we make the commitment to this Court, that if the merger is permitted to take place, the two merged banks will divest six offices in that four-town area so that there will be more competitors after the merger in that area than there are now. And so that the combined bank will have less deposits than either one of them has now in that area.

Now, we offered this to the government in an [18] attempt to reach a reasonable accommodation, and we have no quarrel with their—with the policies they are attempting to serve. We support the antitrust laws. But we think that this support has to be reasonable, and we think the Department of Justice has to take a reasonable position. And so we accepted their view for this purpose and agreed to this divesture, we have signed binding agreements with three banks to acquire one each of those six offices now. These are legally enforcible agreements.

We are willing to divest three more offices in that area. So that following the merger there will be more competitors in this four-town area than before the merger.

Now, this is an effect which would not have taken place but for this merger. And I don't see how any economist can describe it as anything but pro competitive.

We have offered, also, to make strenuous efforts in the form of which we will submit more formally to the Court to enter Hartford.

Now, as your Honor knows, there is home office protection in Hartford as well as in New Haven and Bridgeport. So that, I believe—the only means of supply for a bank outside that area is either by merger [19] or the possibility which Mr. Clark has referred to, but which no bank in Connecticut has yet pursued, of applying for a new charter and making a holding company acquisition in that area.

Now, this is a route which has many legal complica-

tions to it, and which could well result in litigation by some of our competitors, but the combined banks, if the merger is permitted to take place, are willing to make this effort.

Now, Hartford is—if it is a market, and in Mr. Clark's view it apparently is since it is the standard head of a standard metropolitan area, is one of the most concentrated banking areas in the United States, two leading Hartford banks, the Hartford National and the Connecticut Bank and Trust Company, which combined easily dominate that market and they have no close competitors, and as they are in the process of beginning to dominate the entire state.

Now, if there is one thing that seems clear to me in terms of the competitive necessities of the banking structure in the State of Connecticut, it is that that the Hartford area needs additional competition. These banks are willing to provide that competition.

Neither one of them could do it alone. Neither one of them would be willing to commit the resources to [20] try to enter Hartford on its own. As a combined bank, they can take that risk, and in all candor, this is a proposal which is stimulated in part by our desire to put this merger in the proper pro competitive context. We are willing to make the same effort in New London, Connecticut, which is also a very highly concentrated banking market, if it is a market, and it appears to be, at least, under Mr. Clark's view. That is something that neither bank would be likely to do, certainly the Connecticut National Bank would have to jump over New Haven and go all the way down to New London, and there is very little likelihood that it would do that alone. But the merge bank is willing to commit to do that.

Now that I might say by way of a little story, here in Connecticut, the Union Trust Company merged, Fairfield County Trust Company and Union New Haven Trust Company merged a few years ago, and those were banks which—one was in Fairfield County, one was in New Haven, neither one has offices in Bridgeport. They weren't in competition with each other, and, of course, the Justice Department did not file a complaint against that

merger, although you could make the same kind of arguments about that merger that Mr. Clark makes about this one. He says that First New Haven [21] and Connecticut National could each open offices all over the state and compete with each other. Well, you could say the same thing about Fairfield County and Union New Haven Trust Company, but they didn't sue on that merger. One of the results has been that Union Trust Company has just entered the New London area, it is providing new competition in the New London area, it did so by acquiring a small bank, a 15 or 20 million dollar bank. That acquisition has been approved and has now taken place, so that that mer'—mergers are not all bad, sometimes they can have pro-competitive consequences. The Union Trust merger is one which has had such a consequence in New London.

This merger, as I have already said, will have pro-competitive consequences in Orange, Derby, Milford and Ansonia. It will have pro-competitive consequences in Hartford, and it will have pro-competitive consequences in New London.

So Mr. Clark has the burden of showing that there's a reasonable probability of a substantial lessening of competition.

Now, the Supreme Court has said that it requires proof of a reasonable probability, not a mere possibility or conjecture that maybe at sometime in the future somebody might do something. But he has the burden of [22] showing that this merger is going to adversely affect competition in a—by reason—evidence which shows a reasonable probability that such effects will occur. We don't think he's going to be able to do that.

There have been other mergers in the Connecticut area which the Department of Justice has not seen fit to attack. Hartford National acquired a bank in Fairfield County, Connecticut Bank and Trust Company acquired a bank in New Haven. Hartford National's in New Haven. So that I think even Mr. Clark would have to concede that all mergers are not all bad and some of them can have pro-competitive consequences.

But the Hartford Banks are increasing their share of the state market, and they increased them recently with the acquiescence of the Antitrust Division.

Obviously, any merger that now takes place of a national bank or federally insured bank has to have bank merger filed, the Justice Department gets a copy and—to express its views on the competitive factors and if it can do so, it files a complaint and gets an automatic injunction. It didn't do so on those Hartford bank acquisitions, so it apparently has the view that they're lawful and so have pro-competitive consequences.

[23] Mr. Clark has also talked about the line of commerce being limited to commercial banking. Again, he cites the Philadelphia National Bank case as his principal authority for that proposition. The Philadelphia National Bank case, as I said, involved two banks right across the street from each other. And there are some services which are available, at least in the best form from a commercial bank, but savings banks in Connecticut have powers beyond those that savings bank had in Philadelphia, and we'll put on testimony which will establish that beyond any doubt.

And we will also put on testimony which will establish that it is more than reasonably probable in the foreseeable future that savings banks will have checking account privileges in the State of Connecticut.

Now, that was the principal distinction that the Supreme Court relied upon to exclude savings banks from the commercial bank line of commerce in the Philadelphia National Bank case.

The main—deposits and checking accounts—well, savings banks are going to have that in Connecticut, and we will have witnesses who will testify to that effect.

Another—other competitive impacts on the [24] Connecticut market generally are demonstrated in the report of the special master filed with this Court which shows that New York banks are competing in the Connecticut market all the time. They had people combing this market for banking business, they attract very substantial volumes of loans from this area, they attract very substantial deposits from the area, and so do the Boston banks.

So that as far as the choices of the—of consumers and borrowers and depositors in the Connecticut area, they're not limited just to Connecticut banks. They had choices well beyond Connecticut banks. Now, this is a distinction alone which takes this case out of the general strictly merger cases, Supreme Court decisions that Mr. Clark has been relying upon. When he talks about the Continental Can case or the Brown Shoe case, those cases involved national markets, they involved shoe companies that were competing with each other throughout the United States, and when you talk about concentration ratios in the national market, it really is a market which is isolated to substantial degree and which has substantial barriers to supply by competitors from abroad.

That's not the case in Connecticut. As your Honor knows, there is substantial commuters between [25] Fairfield County and New York who have choices of New York banks, if they like, and they subscribe to the New York Times and they see Joe Dimaggo in a full page ad telling them they can get 6 to 7% at the Bowery Savings Bank, and also pointing out that this high an interest rate is not available from any commercial bank, and that's true either in New York or Connecticut.

So the savings banks compete with the commercial banks with an advantage. They can pay higher interest rates and they don't have to pay dividends. They don't have stockholders, they don't pay the amount of taxes that commercial banks do. So they compete.

All right—and Mr. Clark has conceded that, they compete at a substantial advantage over the commercial banks.

Now, Mr. Clark is going to ask your Honor to conclude that a commercial bank in Bridgeport is going to be more worried about the possibility that a commercial bank in New Haven will some day enter the Bridgeport market, although it's now prohibited by law, than they are about existing competition from savings banks in Bridgeport.

People's Savings Bank in Bridgeport is about twice as big as the Connecticut National Bank. It makes [26] mortgage loans, it accepts savings deposits, it pays a

higher rate on savings deposits than does the Connecticut National Bank.

His whole theory is: forget about savings banks that's not in the line of commerce, but I want to worry about the First New Haven National Bank and forget about the fact that Connecticut state law won't let First New Haven National Bank open an office in Bridgeport. He's arguing that under potential competition theory, which economists have and which is valid under appropriate value circumstances, the Bridgeport bank is going to be conditioning its behavior and making its business decisions—look over its shoulder, and First National New Haven—and ignores the savings bank in Bridgeport.

Well, that just seems totally unrealistic to us, your Honor, and I think that our witnesses will satisfy the Court on that.

Just by way of conclusion, I have talked longer than I mean to, this is—this is a question of facts that Mr. Clark is—has to prove here. It is not enough for him to come in and say: well, here are the numbers and here is the standard metropolitan statistical area, and add them up and this is what you get. He has the burden of proof that there's reasonably probably [27] anticompetitive effects which result from this merger, and he has to prove that by facts.

Now, on six other occasions the District Courts have not agreed with the Antitrust Division. We don't say that—in an appropriate case that potential competition shouldn't be a violation of the antitrust laws, the elimination of it, but it is a question of fact. There have been cases, the Penn Olin case that Mr. Clark referred to, the El Paso case, where El Paso and Pacific Northwest were directly competing with each other in pricing gas to the California market. They weren't — Pacific Northwest wasn't in the market yet, but they were potential competitors and there was real competition between them.

But there's no case that the Supreme Court has decided, either on a potential competition or in an area involving direct horizontal competition, or anything like the case that the government has here.

So in conclusion, we think that this merger will have pro-competitive consequences in the Connecticut market and not the anti-competitive consequences that Mr. Clark contends.

MR. CLARK: May I respond, your Honor?

THE COURT: By all means.

MR. McENERNEY: I wonder if it would be appropriate [28] for me just to have a very, very short statement.

THE COURT: I'm sorry, take your time.

McENERNEY: May it please the Court, plaintiff's case, as we view it, may be divided into two parts, namely: the actual competition case, as well as the potential competition case.

Now, as to each of these parts, the plaintiff has the burden of proving that the effect of the proposed consolidation between Connecticut National Bank and First New Haven in the words of Section 7 of the Clayton Act, quote, "may be to substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country."

For their line of commerce in both the actual and in the potential case, they have chosen commercial banking, and for the section of the country as to the actual competition, they have chosen the four-town area of Ansonia, Derby, Milford and Orange.

For the section or sections of the country in their potential competition case, they have chosen the State of Connecticut and each of the nine SMSAs, standard metropolitan statistical areas.

Now, it is our position, your Honor, may it please the Court, that whatever significant SMSAs may have from the Bureau of the Budget viewpoint or for labor [29] studies or for census purposes or for housekeeping purposes or whatever, we contend that they have little, if any, or no relevance in this bank merger case for the very simple reason that plaintiff will be unable to demonstrate that each of the SMSAs is a banking market or a section of the country.

It seems to us, your Honor, that in order to prove that the SMSAs is a relevant geographic market, plaintiff

must demonstrate that a banking customer living in the Town of Granby, for example, in the Hartford, SMSAs, can and does turn to the Glastonbury—some 20 miles away in the same SMSA—for his banking service.

Banking has been characterized by two Supreme Court cases as essentially local in nature. That would be your Phillipsburg case, as well as your Philadelphia case, and it is submitted that each of the SMSAs is not local enough in nature.

Further, since the Connecticut code governs whether a town is open or closed to branch banking, perhaps if the plaintiff could show that each of these towns is a banking market, then each town could conceivably be a section of the country. But certainly the Connecticut code does not speak of SMSAs.

No, as to the line of commerce, we claim that commercial banks in Connecticut do receive very fierce [30] competition from savings banks for the savings dollar and for loans and that the line of commerce should include them in analyzing the impact of this propsed consolidation.

Other courts cited in our brief at pages 15 to 17 have also thought this.

Intervenor also alleges that any consideration of this consolidation should include the formidable out of state banks, particularly New York City which has been mentioned in the comptroller's opinion approving this proposal and, of course, was the prime purpose of the special master's report.

Now, with respect to the actual competition case, we don't want to belabor the points already made by Mr. Reycraft, except to say that the issue of the elimination of actual competition seems moot to us, and if defendants are allowed by this Court to sell off these specified branches to the purchasers mentioned in their pretrial brief, it would seem to us to have a very beneficial effect on competition and would in fact be a procompetitive event as opposed to an anti-competitive event.

Now, concerning the potential competition case—

THE COURT: That wasn't a condition imposed upon the comptroller?

[31] MR. McENERNEY: It was mentioned, your Honor, in our opinion, but we did not condition our approval on it.

THE COURT: I am just curious about that. Can mergers be approved on such conditions? Is there precedent for that?

MR. McENERNEY: I think the FICA has done it in one instance, but I don't believe our office has. I can't recall.

THE COURT: But has your office considered a promise by merging banks to do A, B and C if merged?

MR. McENERNEY: Yes, we have. We have. We have. And I think in a sense that is what we have done in this case.

We have recognized that they would do this.

Now, concerning the potential competition case, it is not enough, we submit, that plaintiff demonstrate that it is possible that some day both Connecticut National Bank and First New Haven will open an office in one of the nine SMSAs or in some Connecticut town. Because the SMSA or the town has projected growth, or in the case of a town where one bank is already there, that the other bank might possibly enter the town some day, and that, therefore, this approach—consolidation eliminates this potential for competition.

[32] We submit that the plaintiffs must prove by proponderance of the evidence that but for this proposed consolidation, both banks are reasonably probable, not just possible, but reasonably probable entrants, for anything is possible, but they must be reasonably probably entrants into towns where neither is now located or in the towns where one bank is already there, that the other is reasonably probable entrant into that town, and that this is likely to happen in the reasonably foreseeable future.

Unlike other industries, such as shoes, steel, liquid bleach and the like, where entry into new markets is solely within management's discretion, entry into banking and into banking markets or towns is governed by statute, which are administered by bank regulatory agencies, and is not up to the free will of the bank. It is the bank regulatory authority, in this case the comptroller, who either allows

or disallows entry. Although we have contended, and still contend, your Honor, that it is part of the plaintiff's proof to show that regulatory approval for branching into various towns will be granted, we are prepared to put on testimony which we believe will adequately demonstrate that all or substantially all of the towns in Connecticut are [33] adequately banked, and that permission for the addition of one or two branches in them will not be forthcoming.

And finally, your Honor, under the Bank Merger Act of 1966, we say that assuming a violation of Section 7 could be found, that the convenience and needs of this proposed merger will clearly outweight any anti-competitive effect.

[34] THE COURT: Mr. Clark.

MR. CLARK: Your Honor, I want to respond at this time to Mr. Reycraft's detailed outline of his settlement proposal which is exactly what it is and what it was. I contend, Your Honor, that this is wholly irrelevant in this case and I ask now that Your Honor rule that any evidence or reference to it is inadmissable. The defendants appear to be conceding one adverse effect of this merger and that is the elimination of existing competition in the intervening area between these two SMSA's. He is making an offer in settlement but this is not the time for consideration of such a matter. We contend that if the merger is illegal for any reason it should be permanently enjoined, and the cases, the Supreme Court cases, the lower court cases, overwhelmingly support that notion that in an anti-trust case the relief where possible should be divestiture, total divestiture, if the parties have already merged or if they have not, permanent injunction.

This is really, Your Honor, rather a matter of relief, not a matter to be considered during the trial on the matter. Their agreement to sell off branches is not a part of the consolidation agreement. It was not entered into when these banks made their agreement, [35] It is simply a way, it appears, to take some of the sting out of this anti-competitive effect. That is a matter of belief. If the elimination of existing competition violates Section 7, then it is time to consider what is to be done about it.

THE COURT: I don't understand what you mean by it's a matter of relief. Relief from whom?

MR. CLARK: Well, relief from the anti-competitive effect of this merger, the point being, Your Honor, that it is the merger and only the merger which is or should be under consideration here. That is the agreement that they entered into and that is the agreement that should be tried.

THE COURT: Are you implying that there are cases and perhaps research of course will disclose it later. But from your experience and knowledge there are cases in which the court—courts have said: Oh, I find that this merger does have an anti-competitive effect, and therefore I will allow the merger except that in the towns of A, B, C, and D the resulting banks shall divest themselves of any and all interest, et cetera, in those towns. Is that what you meant by relief?

MR. CLARK: Yes, Your Honor, and I contend that there is a public policy against divestiture of banks or bank's assets because, Your Honor, it has been [36] shown time and time again it doesn't work. The intended result from a divestiture of a bank or a portion of a bank seldom is actually achieved. And in any event the proper time for consideration of that is if there is a finding that the merger violates Section 7, and not at this point. Mr. Reycraft is trying to get—

THE COURT: Just go over that again. I am sorry to keep interrupting but I just want to make sure I know what lines and avenues are open to the Court without giving you any indication I have prejudiced anything, which I have not. But is it your point that there is bifurcation of some sort here?

MR. CLARK: Yes, sir.

THE COURT: That if the Court makes a ruling that there is, or is not, violation and if it decides that there is, then the parties can come in again and say: All right, reserving all rights to have your decision considered by another forum, we are now willing to concede for the sake of argument that the Court is correct and therefore we offer the following to—by way of relief, that is, divestiture of the following banks in the following towns. Is that what actually happens here?

MR. CLARK: Well, that is what actually happens [37] in almost every anti-trust case. The usual procedure

in anti-trust cases is for the court to reach a decision on the merits and having done so he then makes his decision on the appropriate relief. Now this is applicable in cases where the two merging parties have already merged. Obviously the Court finds that merger to be illegal. Something must be done to set things as closely as possible back to the position that they were before the merger.

THE COURT: Do I understand the Government's position in this case is that we have two large banks wanting to merge and the effect of that merger is of concern to the Government in no other SMSA except the Orange-Ansonia-Milford—

MR. CLARK: We are concerned of the effect of the merger on all of the SMSA's in the state, in the entire state as a whole and in this four-town area where there is this immediate overlap. We contend that there are anti-competitive effects in all of these areas, so obviously if we are right, the actions which defendants are proposing won't alleviate that. But I saw, Your Honor, that it is well nigh impossible and certainly hardly ever done that a court should, while it is considering the legality of a merger, to at the same time consider possible relief or means of alleviating the [38] illegality which it has not yet decided, whether there is any or not. It is customary in anti-trust cases that there be a two-step process. First, a decision on the merits; second, a decision on the appropriate relief. And—so we contend, Your Honor, that this whole subject of divesture of offices, of the undertaking by defendant should they be permitted to merge, to enter other SMSA's as a combined bank, these—this subject is not a proper subject for consideration at this time because there has been no decision as to what the effect of the merger will be. I note that Mr. Reycraft hasn't sold these offices. These offices have not been sold—they still are a part of the bank and should the banks be permitted to merge under the existing agreement between them, these offices will all become offices of the combined bank.

THE COURT: With respect to the Government's motion, I will reserve decision and perhaps in your brief you gentlemen can call the Court's attention to the reservation on the ruling and if it is indeed irrelevant, I will not

consider Mr. Reycraft's statements. On the other hand, of course, if I find the case law is such that it should be considered in some aspect of the decision, I will so consider it. So decision is reserved on that motion.

[39] MR. CLARK: Yes, Your Honor. Now, Mr. Reycraft alluded to some district court decisions which he contends are relevant in your decision here. It is true that they all dealt with the subject of potential competition in banking. It is also true that they were all only district court cases and there is one finally on appeal to the Supreme Court. And so we can, of course, look to the Supreme Court for some guidance in this area. Mr. Reycraft has always pointed out that each case is a question of fact and therefore it is obviously so that each case is different. And there can be no denial that in none of these previous cases was there anything like what we have here. In none of these cases were there two banks both leading banks in the state; in none of these cases were there two banks headquartered only a few miles apart in a state as small as Connecticut. It is one thing to consider whether or not a bank in Jackson, Mississippi would expand into a relatively small agricultural area in Greenwood, Mississippi 95 miles away, and it is something else to consider the situation which we have here in Connecticut, a highly concentrated state banking market, a highly unified, very small geographical area involved, and two big aggressive, leading banks. This consolidation, your Honor, is much, much different [40] than any which have been tried in the past where potential competition was a factor. I note that defendants are—well, they say on the one hand that entry into Bridgeport and New Haven by outside banks is impossible, and, of course, we contend that that is not the case, and that entry into other markets in the state is impossible because of home office protection. They are willing to undertake to do it should they merge. Our contention is that both banks are quite capable of doing it now and that there is every potential that they would do it each separately if they had the opportunity. Potential competition, it has been held by the Supreme Court, is to be considered objectively. Objective criteria are to

be used to assess whether or not the potential competition exists. Defendants then would have us believe that the inexorable growth of the largest banks in this state geographically will stop; that the explosive increase in the number of branches operated by these largest banks, which we have seen over the past fifteen years, will stop; that the inexorable increase in competition which we have seen held by the ten largest banks in the state will stop. In other words, that all of the objective critera which the Government will point to as indications of the existence of significant potential [41] competition mean nothing, just because the defendants get on the stand and say so. We say that the standards set down by the Supreme Court assessments of potential competition require an objective analysis and the objective analysis in this case is overwhelming and leads to only one conclusion: that there is elimination of both potential and existing competition.

THE COURT: All right.

MR. REYCRAFT: I think Mr. McEnerney probably recalls now that the Comptroller's office did on one prior occasion condition the approval of a merger on the divestiture of branches in the Wells Fargo Bank in California application to acquire First Western Bank and Trust Company. The Comptroller of the Currency conditioned his approval on the divestiture by Wells Fargo of all of the northern branches of that bank in California which were in competition with the Wells bank. That included all the northern branches. Now, I must add, in fairness, the Department of Justice didn't like that position. They filed a complaint and that is in litigation, but the Comptroller of the Currency has done that and there is one other thing. That is that there is no requirement that the court proceed by any two-step process. I don't know of any case where this has happened in a bank merger and there [42] is no necessity for it. And it is our view that the court should view this merger as it is going to take place, that is, what are the—what are the net effects of this merger and these are not idle statements that we are making about the divesture of these branches. We will do it and we will do it in—

and satisfy the Court in whatever form is required. And —show that it can be done, and it is our view that the Court should view the merger in its net consequence, not ignore what is a clear fact, that is, that we will do this.

MR. McENERNEY: Nothing further, your Honor, except I do recall now as Mr. Reycraft said, the first question in the Wells Fargo case.

THE COURT: Call your first witness.

[43] FREDERICK GLANTZ, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you state your full name and address for the record, please?

THE WITNESS: Frederick B. Glantz. 24 Stewart Road, Newton Center, Massachusetts.

DIRECT EXAMINATION

BY MR. BENTKOVER:

Q Doctor Glantz, what is your profession?

A I'm a Regional Economist with the Federal Reserve Bank of Boston.

Q Would you describe for the Court your educational background?

A I have a Bachelor's degree in mathematics from the City College of New York, and a Doctor of Philosophy in economics from Syracuse University with a specialty in urban and regional economics.

Q What professional position did you hold prior to your present position with the Federal Reserve Bank of Boston?

A I was an instructor of economics at Temple University at Philadelphia.

Q What professional organization have you been affiliated with?

[44] A I'm a member of the American Economic Association, and the Regional Science Association.

Q Could you explain what that latter association is?

A The Regional Science Association is a—er—disciplinary group of scholars concerned with regional prob-

lems.

Q What is the nature of your work and responsibilities as regional economist—with the Boston Fed—

A As a regional economist for the Boston Fed., I'm concerned with monitoring regional economic conditions in New England and conducting studies on economic conditions in the New England region.

Q Have you written on the subject of regional economics;

A I have.

Q And what are your writings in that field?

A I have a publication forthcoming in Regional Science Perspectives on evaluating—measures regional accounts, and I just published a piece on the New England —entitled the New England Economy, Recent Performance and Recent Prospects of the New England Indicators.

Q What was the subject of your doctoral dissentation?

A The title of the thesis was the Determinates of the Intermetropolitan Migration Patterns of the Economically Disadvantaged it was concerned with the movement of labor, specifically unskilled labor, between metropolitan area labor markets.

[45] MR BENTKOVER: Your Honor, I submit that Doctor Glantz is eminently qualified to testify on the subject of regional economics.

THE COURT: Well, why don't you just proceed and we'll see if you get any objection along those lines, and at that time I'll hear them.

Q Doctor Glantz, would you briefly explain what the field of regional economics involves?

A Regional economics essentially is a scaling down of the entire discipline of economics to the subnational level. We're concerned with where economics takes place in space, we're concerned with what gets produced, where it gets produced and how it gets produced. Thus, we're concerned with subnational economies. What causes the viability of these subnational economies, the interrelationships between these subnational economies that make for the economic well-being of an individual area.

Q What is a standard metropolitan statistical area, or for short, an MSMA?

A Well, in regional economics, the region that ecnomists are most concerned with is a self-contained spatial labor market. We're concerned with the fact that a city or a town—or for that matter, you could exaggerate and take it down to the individual city block level. You can't examine the 1200 block of Main Street, it wouldn't make very much sense. [46] Virtually all of the people living on the 1200 block of Main Street would not work on the 1200 block of Main Street, and vice versa.

Well, the same thing is true of an individual city or town. The boundaries of cities and towns are largely accidents of history, and bear little, if any, relationship to the economic facts of life. So, as a consequence, economists have constructed the notion of a standard metropolitan statistical area which is an aggregate of cities and towns and counties, building up a cluster of cities and towns and counties until we have a cluster in which virtually all of the people living in that cluster of cities and towns also work in that cluster of cities and towns, and this becomes an SMSA or a self-contained spatial labor market.

Q How do you quantify this motion of a self-contained spatial labor market?

A The Office of Management and Budget uses the county as the basic building block in constructing a metropolitan area. Exhibit P-1 presents the detailed criteria used by the Office of Management and Budget to construct the MSMA.

Briefly, an MSMA is built around a central city, having a population of 50,000 or greater, or a group of cities within a 20 mile radius of one another having an aggregate population of at least 50,000.

[47] Then the county which contains the central city or cities, then forms the central county of the MSMA. To the central county we begin to cluster contiguous counties. The basis for adding on a contiguous county or excluding a contiguous county is based on the amount of social and economic integration between the county in question and the central county.

The OMB has set up specific criteria for determining economic integration based upon commuting patterns. At least 15% of those working—those living in the county in question must come into the central county to work. Or at least 25% of the labor force of the central county must come out and work in the county in question.

Thus, we have very specific notions of commuting patterns in determining what is and what is not included into the SMSA. And then we add up county upon county until we have exhausted all counties which have specific economic integration with the central county.

It should be noted that the procedure is somewhat different in New England. In New England, the county is too large to be a meaningful unit. Cities and towns are much more meaningful. So the OMB when it constructs a metropolitan area in the New England region builds up using the individual cities and towns as the unit of analysis, using the same criteria of commuting between the central city and the individual towns in question.

[48] Q Are the Bridgeport and New Haven areas classified as SMSAs?

A They are.

Q Would you describe which cities and towns—

A Separate SMSA?

Q Yes, SMSAs?

A Yes, they are.

Q What cities and towns are included in the Bridgeport SMSA?

A Exhibit 3 lists the cities and towns graphed by OMB to be in the Bridgeport standard metropolitan area, the City of Bridgeport, the Towns of Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull and Milford City.

Q What cities and towns are included in the New Haven SMSA?

A Exhibit P-4 lists the cities and towns that OMB classifies in the New Haven SMSA.

They include the central city of New Haven, the Towns of Bethany, Branford, East Haven, Guilford, Hamden, North Branford, North Haven, Orange, the City of West Haven and the Town of Woodbridge.

Q Do you consider the Bridgeport and New Haven SMSA to be a single integrated area, or two separate and distinct areas?

A The Office of Management and Budget classifies them as two separate and distinct areas, and I would tend to agree [49] with them. Exhibit P-2 presents data from the 19—census of population on commuting between metropolitan areas in Connecticut.

We can see from this that there is very little, if any, cross commuting between New Haven metropolitan area and the Bridgeport metropolitan area. Only 3.6% of Bridgeport's resident labor force commutes to work into the New Haven metropolitan area. While only 2.7% of New Haven's resident labor force commutes to work into the Bridgeport metropolitan area.

The two areas also meet the criteria of being relatively self-contained labor markets. 87% of the New Haven metropolitan area's labor force actually works in the New Haven metropolitan area.

Similarly for the Bridgeport metropolitan area, 83% of Bridgeport's labor force actually works in the Bridgeport metropolitan area. So on the basis of our notion of a self-contained labor market, these two areas appear to be self-contained labor markets and there appears to be very little, if any, economic integration between the two.

It should be noted, however, that because of the proximity, the spatial proximity of the two areas, actually bordering upon one another, the boundary between the Bridgeport and New Haven metropolitan area cannot be very sharply defined.

Unfortunately, there's no public data available on the [50] cross commuting between individual towns in individual metropolitan areas.

Had this been available, I would suspect that the outlying towns in each of the metropolitan areas would have substantially more economic integration with one another than the two individual metropolitan areas do.

These outlying areas take on increased importance when we recognize that over the last several decades the growth that has been taking place in the metropolitan areas of this country has been taking place not in the central city, but in the outside central city or suburban areas.

Exhibit P-3 presents the population distribution for the Bridgeport standard metropolitan statistical area in 1950, '60, and '70, and it shows that the City of Bridgeport's share of the metropolitan area population has been steadily declining since 1950.

Exhibit P-4 presents similar data for the New Haven SMSA and the same thing is true. The population of the City of New Haven has been steadily declining over the 20-year period.

Actually, in 1970 the two metropolitan areas crossed the bench mark in which more than 50% of the population of the metropolitan areas now resided in the outside central city or suburban areas rather than in the central city.

Exhibit P-5 shows quite clearly where the growth in these two metropolitan areas has been taking place. Between [51] 1950 and 1970 the City of Bridgeport's population declined slightly, declining by 1.4% over the 20-year period. Whereas the outside central city, the suburban portion of the metropolitan area, almost doubled in population over the 20-year period increasing by some 98.5%.

Similarly for the New Haven metropolitan area, the City of New Haven declined by almost 20%, 19.4% over the 20-year period from 1950 to 1970, whereas the suburban area, the outside central city area, doubled in population, increasing by 100.6% over the 20-year period.

Q Does either the Bridgeport or New Haven SMSA appear integrated with the New York area?

A I don't think so. Exhibit P-6 presents commuting patterns between selected standard metropolitan areas in Connecticut into the New York State area in 1970. It shows clearly that less than 1%, actually .95%, of the Bridgeport area's labor force commutes to work into the New York City area.

For the New Haven metropolitan area, less than 1/10 of 1/5 indicated by the day there being too small to record—works in the New York area.

On the other hand, workers coming into—coming from New York into Connecticut also appear to be quite small for the metropolitan areas in question.

Exhibit P-8 presents the residents of the New York City [52] SMSA who worked in Connecticut in 1970 and we can see that the numbers are really insignificant, in most cases being less than 1%.

THE COURT: Is that indicated by the dash?

THE WITNESS: Percent working in Connecticut, dash, indicates that it is less than 1/10 of 1%.

THE COURT: Less than 1/10 of 1%?

THE WITNESS: Yes. But we have, for example, Bronx County, .48%, is less than 1%. So that the amounts of commuting between the New York metropolitan area into the State of Connecticut appears rather small, and actually it is concentrated in only two metropolitan areas. The Stamford SMSA and the New York SMSA. So from the census data from 1950 to 1970 census data on population commuting, that appears to be very little cross commuting or very little integration between New York metropolitan area and either of the two SMSAs, the Bridgeport area and the New Haven area.

A Exhibits P-7 and P-8 present similar data obtained from the Connecticut Department of Labor from the Nineteen Sixty—

Q Excuse me, Doctor Glantz. Were you referring to Exhibit P-8, or P-9?

A Excuse me. P-7 and P-9—present data compiled [53] by the Connecticut Department of Labor from a 1964 survey on commuting patterns, and they show essentially the same results, that there is very little cross commuting between the New York metropolitan area and the individual labor markets in Connecticut that we are concerned with, the Bridgeport area and the New Haven area.

Q Doctor Glantz, now let's turn to the amount of commuting with the Hartford and Boston SMSAs. Does the Bridgeport SMSA appear integrated with the Hartford or Boston standard metropolitan statistical area?

A Again, it doesn't appear to be. Referring back to Exhibit P-2, we can see that the amount of commuting between the Bridgeport metropolitan area and the Hartford metropolitan area, and similarly the Boston metropolitan area, is too insignificant to be recorded on the

least of significant receivers of labor from the Bridgeport metropolitan area, so I'd say that the Bridgeport area is not significantly integrated with either the Hartford or Boston areas.

Q Does the New Haven SMSA appear integrated with the Hartford or Boston SMSAs?

A Well, again, from Exhibit P-2, this doesn't appear to be the case. The Boston metropolitan area does not appear on the list of significant recipients of New Haven labor in 1970. The Hartford metropolitan area does, but the amount of commuting [54] from the New Haven metropolitan area into the Hartford metropolitan area appears to be rather insignificant, some 429 persons who live in New Haven out a total labor force in New Haven of 145,000 actually commute into the Hartford metropolitan area.

So while there's some commuting between New Haven and Hartford, the numbers are really too insignificant to indicate any economic integration between the areas.

THE COURT: Excuse me. Doctor Glantz, I have been following you fairly well. These last points you have been making. I haven't been with you on the charts that you have been referring to in P-2.

THE WITNESS: I'm on the page marked "New Haven SMSA".

THE COURT: All right. You said something on that should reflect movement from New Haven to Hartford?

THE WITNESS: Okay. If you look on—

THE COURT: Where would that be?

THE WITNESS: If you look on the bottom of the list of 20 places, the last two lines, Hartford City, Hartford County and remainder of the Hartford SMSA, when we sum up the 159 people who live in the New Haven metropolitan area and work in the Hartford [55] City to the 270 who live in the New Haven metropolitan area and commute into the rest of the Hartford SMSA, we get 429 out of a total labor force of 145,000. It appears to me that this is rather insignificant.

THE COURT: And Boston is not listed?

THE WITNESS: Boston does not appear on the list of significant recipients. Even if we were to include the

total places not recorded, not listed in 20 places, 3,796, this is a percentage of 145,000—appears rather small. Less than 1%. So I'd say that, you know, even if we allocated everything that we don't know to the Boston area, it would still be insignificant.

THE COURT: I see. Thank you.

Maybe I should give the court reporter a short recess. With all these statistics and the oral arguments, it is quite a bit for him to take down. Give him a five-minute recess.

(Recess taken.)

MR. CLARK: Your Honor, I neglected to do something when we started today, and that was to move, as I said I would, that Plaintiff's Exhibits 1—Plaintiff's Exhibits for Identification, 1 through 115, be admitted subject to motions to strike at a future time.

THE COURT: Yes. Motion is granted.

[56] Q Doctor Glantz, would you describe for the Court the New England region?

A The New England region includes the States of Vermont, New Hampshire, Maine, Massachusetts, Connecticut and Rhode Island. These six states—or the States of New England—in actuality, the region may really be subdivided into two separate regions, nothern New England, which is essentially rural, Vermont and New Hampshire and Maine, and the industrialized southern states, Connecticut, Massachusetts and Rhode Island.

The vast majority of the population and employment that goes on in New England takes place in the industrialized south.

In 1970 81% of the population of New England resided in the three southern states. In 1971, 83% of employment in New England was concentrated in the three southern states. In actuality, the population and employment is even more concentrated than this data indicates.

Most of the region's population lies on an industrial and commercial belt between New York and Boston.

Exhibit P-10, which lists the population of Connecticut by counties in 1950, '60 and '70, indicates that the three

Connecticut counties which lie on this narrow band between Boston, Mass.—Massachusetts and New York City, Fairfield County, Hartford County and New Haven County, account for ¾ [57] of the state's population in 1970.

In Massachusetts the three metropolitan areas which lie on the belt, Boston, Springfield and Worcester, account for nearly ⅔ of the state's population. So, really, what we have is two regions, a largely rural northern New England with population scattered throughout, an industrialized southern New England with most of the population and economic activity taking place on a narrow belt running between Boston and New York.

THE COURT: Excuse me, Doctor Glantz, I followed your conclusions—I'm sorry, I have your conclusions, but I didn't quite follow how you arrived at those conclusions in Exhibit 10. Would you just a little more slowly go over that so I'll be able to follow it?

THE WITNESS: If we look at the percents of Connecticut's population in 1970 residing in the towns of—in the counties of Fairfield, Hartford and New Haven, the three counties that lie on this belt between New York and Boston, we find that they accounted in 1970 for approximately ¾ of the state's population.

Now, on Exhibit 10 was the fact that in 1970, the three Massachusetts metropolitan areas which lied on the belt, the Boston SMSA, Springfield and Worcester SMSA, accounted for nearly ⅔ of that state's population, these two states being the two most populated states [58] in New England, so really what we have is a vast amount of concentration of population and economic activity lying on this belt between Boston and New York.

THE COURT: Very well. Thank you.

Q Doctor Glantz, how would you characterize the present state of the New England economy?

A Well, I think the New England economy is still in a recession. In July of this year unemployment in New England was 7.2% seasonally adjusted, compared to a national rate of 5.5%. In that same month industrial production in New England as measured by the Federal

Reserve Bank of Boston's industrial production index indicated that industrial production in New England was 4% below its 1967 level, and in the United States in that same month, July of this year, industrial production was 13% above its 1967 level.

So we can see that the United States economy has begun on the road to recovery some months back. Unemployment is going down, industrial production is up, but the New England region appears to be lagging somewhat in its recovery behind the nation.

THE COURT: Were you looking at a chart—

THE WITNESS: No.

THE COURT: —for those conclusions?

[59] THE WITNESS: No.

Q Why is the economy of New England lagging behind—rather, why is the recovery of the New England recovery lagging behind that of the nation?

A Well, part of New England's problem is its industrial mix. Regions which tend to specialize in manufacturing, especially durable goods manufacturing, that is: have a high proportion of their employment concentrated in these industries, tend to be affected much more severely in periods of recession than do other areas.

The New England region has more than the average proportion in both durable goods manufacturing and manufacturing as a whole. So you would anticipate a deeper recession in New England, unemployment higher, industrial production lower than in the country as a whole solely on the basis of its industrial mix.

But as far as lagging in its recovery, coming out of the recession, we have to take into consideration that New England has many locational disadvantages for many types of manufacturing. There are few raw materials in the region, the region tends to be remote from national markets, most of the population lies in other parts of the country, making New England stuck in the northeast portion of the country fairly remote from national markets.

[60] Industrial fuel costs, as well as residential fuel costs, are higher in New England than in other regions.

Wage rates for unskilled labor are somewhat higher

in New England than they are in other regions of the country. When you add up the sum total of these locational disadvantages that translates into a cost disadvantage for a manufacturer producing a product in New England trying to compete with similar manufacturers in other regions of the country.

This isn't a recent phenomenon, it's been true for 30 or 40 or 50 years, perhaps even longer than that.

The outcome of this is that the new manufacturing establishments that have come into being in recent decades have tended to locate near regions where they wouldn't be hindered by the locational disadvantages that they would find in New England. This translates into New England having older plant and equipment which tends to make it somewhat less effective than its competitors in other parts of the country.

So when we couple this with the fact that manufacturing takes it on the chin in recession—

MR. REYCRAFT: Your Honor, excuse me, may I ask to what question this is in response? These are very broad conclusions and factual statements, and with all due regard to the witness' expertise, when he talks about cost disadvantages of New England [61] industry, I just don't know what the foundation for it is.

THE COURT: You mean the foundation for his conclusion?

MR. REYCRAFT: His knowledge, yes, sir, these are factual conclusions.

THE COURT: If that is a challenge to his expertise, you may cross examine him with respect to his expertise before he expresses an opinion. If it just goes to weight, of course, you will have an opportunity to cross examine. But in his—these are opinions he is expressing.

Now, I notice in some of the opinions he has expressed, he's referred to charts prepared by various organizations and government agencies. The basis for these latter conclusions, the last few opinions he's expressed, he has not referred to the foundation for those.

MR. REYCRAFT: That's the point.

THE COURT: Well, there's two things. One, that he's relying on his expert experience in the field, or, two, he's

relying on some statistics obtained from a source he hasn't revealed.

In either event, you have two alternatives, Mr. [62] Reycraft, if it is on the former, that is: on the basis of his expertise, you may object and now at this point challenge his expertise. If it is on the latter, that is: —you admit he's an expert, but you don't know what he's deriving all this from, that would be based—that could be challenged on cross examination.

MR. REYCRAFT: Yes, your Honor, I do not challenge his qualifications as a regional economist which is what he's qualified for, so I'll defer the cross examination.

THE COURT: Very well. But since we have had this interruption, it gives me an opportunity to interject a question without interrupting you.

You haven't mentioned the effect of imports from other countries as affecting the manufacturing decline in the New England states. I gather, so far from what you have said, is that you are taking the United States as a unit and you are saying: well, in other parts of the United States, labor is a bit cheaper, new factories are being started, and in New England, costs are higher, which, of course, from what you say, if those statements are true, that would account for your conclusions. But how about imports from other [63] countries?

THE WITNESS: Well, I was directing my answer to New England's locational disadvantages vis-a-vis other regions of the country. Now, if a given industry was to face serious competition from abroad, that industry would suffer that competition regardless of its location in the United States, and that wouldn't be a factor causing New England to be at a disadvantage when compared to other regions.

THE COURT: In other words, they would all be at a disadvantage throughout the United States?

THE WITNESS: They would all be at a disadvantage.

A Let me recap. I have left off, I believe, by stating that the locational disadvantages in New England translated into older plant and equipment by virtue of new establishments being located in other regions, this results in New England establishments being somewhat

less effective, having older capital stock, being necessarily more labor intensive than their competitors in other regions, as a result of this when recovery comes and when manufacturing begins to retool, it is the more effective establishments that are retooled first, that pick up first, and these tend to be located in other regions of the country. So we would anticipate a lag in New England as far as recovery goes.

[64] Q Is this situation equally true for all of the states of New England?

A Well, it is generally true of the region as a whole. Each of the individual states in the region has a somewhat different mix of industries, and each of the individual states would be affected to a greater or lesser extent from the region's locational disadvantages, which would translate into a somewhat different performance among the states over the cycle, and this is true.

In July of this year while New England had an unemployment rate of 7.2% seasonally adjusted, the range of unemployment among the states in New England went from 7.8% in Connecticut to 4.8% in New Hampshire. Connecticut has an industrial mix with a lot of manufacturing. This would be expected. Whereas New Hampshire has mostly rural—a rural economy. So that the industrial mix alone would account for some variation among the states within the region and couple this with the fact that each state is located somewhat differently from each of the other states in the region, and then would therefore suffer to a greater or lesser extent from the locational disadvantages than the region as a whole, and they would experience different economic performance over the long run, some states would grow faster than others over 20, 30, 40-year period, their industrial mix would translate into somewhat [65] different performance over the cycle. I think this can be illustrated, the different performance of the states, over a longer period, by examining the Exhibits L-11 through P-14.

Exhibit P-11 presents the population of the United States and New England—and each of the six New England states, and what I'm focusing on now is the percentage change between 1950 and 1969. New England

increased population by some 26%, somewhat less than the nation as a whole, which increased by 33%. Among the New England states, Maine grew at a rate of 8%, ⅓ of the New England rate, while Connecticut grew at a rate of 49%, almost double the New England rate, and some 14% faster than the nation as a whole.

In Exhibit P-12 we have similar data for employment. Over the 1950 to 1969 period New England's employment increased by 33.5%. Among the states the range was from 20.7% in Maine to a high of 53.2% for Connecticut. Again, there's a wide range of experience in growth of employment among the New England states.

In P-13 we present similar data for personal income. And again between 1950 and 1969 period we see that New England increase personal income by 111%, somewhat less than the nation as a whole, which increased by 120%, but among the New England states Maine increase personal income by 84%, while Connecticut increased personal income by 145%.

[66] In Exhibit P-14 we present similar date for per capita income, and here we see that the New England experience over the '50 to '69 period has been comparable to that of the nation. New England growing by 67% in per capita income to the nation's 65%, while the individual states showed no great variation, I'd say the rates of growth there were comparable among the New England states.

But in terms of the individual state's economy, we have to recognize that while the rates of growth have been comparable over this period, the different states started from much different base periods. In 1950 per capita income in Connecticut was $2,587.00, substantially higher than the New England figure of $2,209.00 and higher than the United States figure of $2,065. And even with comparable rates of growth over the 1950 to 1969 period we see that this initial advantage that Connecticut had gets magnified, and by 1969 the gap had widened such that Connecticut had per capita income in 1969 of $4,239.00 as compared with New England's 3,696 and the United States' 3,416. So what these four exhibits show is that over the cycle, in the short run we would

expect somewhat different performance from the individual states on the basis of differences in industrial mix, and over the longer run, 20 years, the past 20 years, we have seen that states which are more favorably situated within the region, such as Connecticut, which doesn't experience the severe locational [67] disadvantages that the region as a whole does, performed somewhat better.

Connecticut is favorably located, as I indicated before, between metropolitan New York and metropolitan Boston. So while the region as a whole may not be growing very rapidly, and these exhibits indicate it has been growing somewhat more slowly than the nation as a whole because of its locational disadvantages, the intraregional differences show up quite clearly that Connecticut is reaping the benefits of a favorable location within the region, it is getting spill-overs from other parts of the region.

Q Despite Connecticut's favorable location, the state still has recently high unemployment. How do you account for this?

A Well, as I said before, we would expect regions and states which specialized in manufacturing and especially durable goods manufacturing, to have a somewhat deeper recession. This is definitely true of Connecticut. Connecticut has substantially more manufacturing employment on a proportional basis than does the United States or even the entire New England region. In 1968, the last year of full employment, 41% of Connecticut's employment was in manufacturing, and 32% of its employment was in durable goods manufacturing. Because of these rather high concentrations in manufacturing, and expecially durable goods [68] manufacturing, we would expect Connecticut to have a much deeper recession and perhaps a somewhat longer recession than the nation as a whole. But if we look at Exhibit 17 and Exhibit 18—that's P-17 and P-18, your Honor—we can see that this has been true historically, that in past recessions Connecticut has sustained a very high unemployment rate during a recession, but it has always managed a complete recovery.

In 1949 Connecticut's unemployment rate was 8.7%

at the height of the recession, and three years later in 1952 it was down to 3.4%, and in the following year it got down to 3.2%.

In 1958, in another recession, Connecticut had a high unemployment rate of 8.4%, and by the mid-1960's, when the nation had peaked in its recovery, Connecticut had also peaked and had gotten its unemployment rate down to 3.2%. So I think that Connecticut's very high unemployment rate right now, despite what I would consider a favorable location within the region, can be attributable to its heavy concentration in manufacturing and durable goods manufacturing, its industrial mix.

Exhibits 15 and 16, I think will bring out the importance of industrial mix somewhat more clearly. Exhibit 15 presents the distribution of employment in the Bridgeport labor market area in selected years, and if we look at the last year of full employment, 1968, we see that the Bridgport area had [69] 48.6%, nearly half of its nonagricultural employment, was in manufacturing. In Exhibit 16, which presents the distribution of employment for the New Haven area, again looking at 1968, we see that only 30.5% of its nonagricultural employment was in manufacturing.

These two figures should be compared to a United States figure in 1968 of 27% of nonagricultural employment in manufacturing. So in 1968 just before the recession the Bridgeport area had nearly twice as much of its employment concentrated in manufacturing than the nation as a whole, while the New Haven area had just slightly more of its nonagricultural employment concentrated in manufacturing than did the nation as a whole.

When we look at the unemployment rates in the Bridgeport area and the New Haven area in 1971 and compare those to the United States figure, and we can see this on Exhibit P-18, we see that in 1971 Bridgeport's unemployment rate on an annual average was 10.5% as compared to a national figure of 6.0%, substantially higher than the national figure, whereas New Haven with only slightly more than the national proportion in manufacturing had just slightly more than the national unemployment rate in 1971, 7.3%.

So this shows quite clearly that other things being equal, areas that specialize in manufacturing which are severely affected in recessions tend to have much higher [70] unemployment rates than areas which do not. So I would say that Connecticut's unemployment rate, its high unemployment rate, is probably accounted for almost entirely by its very heavy concentration in manufacturing, 41% in 1968, and that Connecticut's prospects for recovery are very good.

The unemployment figures for the last couple of months seem to indicate that Connecticut has begun a belated recovery. In August of this year Connecticut's unemployment rate was 7.4% seasonally adjusted, down from a high of 9.5% in April.

The Bridgeport area's unemployment rate in August was 9.3%, down from a high of 12.1% in March, and the New Haven area in August had an unemployment rate of 6.6%, down from a high of 8.6% in March. So in the last several months the unemployment situation in Connecticut in the Bridgeport and New Haven areas has improved substantially, and I think that these two areas can look forward to a complete recovery as can the state as a whole.

Q What are the growth prospects for Connecticut and for the Bridgeport and New Haven SMSAs?

A I think the growth prospects for the state and these two areas within the state are quite good. In the future, 10, 20, 30 years, the state and these areas should exhibit relatively good growth. Even though New England as a whole will probably exhibit a growth rate slightly below the national rate. I say [71] this because of Connecticut's favorable situation, favorable location within the New England region.

From a location in Connecticut and from a location in Connecticut on the transportation network, the highway network that runs through the center of Connecticut, linking the New York and Boston areas, a firm can serve all of New England and, for that matter, all of the northeast from a very good competitive position.

Also from a location in Connecticut, and especially on the highway network through the center of Connecticut,

a firm can reap virtually all of the locational advantages that would accure from a location in the metropolitan New York or a metropolitan Boston since from its location around the center, you would be an hour and a half from the fringe of either of these areas, you can tap the consultants in these areas and the other business resources that are available in these areas.

So I think that in terms of geography, Connecticut and these two areas within Connecticut are quite favorably situated.

In addition to that, I think the national trend away from manufacturing as a source of employment will also help Connecticut in competing in national markets. When competing in national markets, Connecticut is somewhat at a disadvantage [72] being in New England, being in the northeast, but when we move away from manufacturing and into nonmanufacturing, we move into those fields which are not seriously affected by location.

What they require is good communication and transportation networks. Two major metropolitan areas—and I think that a location in Connecticut would afford a firm a very good location in nonmanufacturing. I think that the experience over the last several decades has indicated that this is the case.

We have witnessed an exodus of business firms from the New York metropolitan area into southern Connecticut, into lower Fairfield County. I think that this trend will probably continue into the future with more firms leaving the New York metropolitan area and moving further up into Connecticut.

In the last decade we have begun to see the same sort of thing happening in metropolitan Boston. We have seen an exodus of many firms going to the outlying areas in the metropolitan area, some into southern New Hampshire, and I think that this trend will continue, and as firms move out of metropolitan Boston, if they're going to serve a national market, a northeastern market, as opposed to a strictly metropolitan Boston market, then Connecticut would become an ideal location for them.

So that I think that in the long run we can expect favorable growth from the State of Connecticut and from

these two areas which are favorably situated within the state.

[73] Q Could you be more specific as to the amounts of growth which you expect for Connecticut and for the two SMSAs in Connecticut, the Bridgeport and New Haven SMSAs?

A Well, in order to quantify what growth we could expect from these areas, we really have to quantify the two major factors accounting for long run growth in any region. These are the region's industrial mix and the locational factors that would affect each of the industries within this region, and to do this we look at the industrial mix, we look at the distribution of industries in a given region and we project each industry forward into the future separately. We project forward transportation equipment, we project forward electrical machinery and so on. We get down to the level of the individual industry as far as we can rather than relying on broad aggregate such as manufacturing and nonmanufacturing.

Having projected forward each of the industries in the area, assuming that each industry in the area would perform as well as that industry does nationally and then summing up overall of the industries, we would get the growth that would be expected from this region on the basis of its industrial mix.

To this growth, due to industrial mix, we then modify our projections on the basis of changing regional shares of each individual industry's employment growth that would be attributable to regional factors. For example, if we look at the textile [74] industry which has been declining nationally for the last several decades, if a region was to have textile employment, this would constitute a drag on its growth, because the industry is not growing rapidly nationally, it is declining, so its industrial mix factor would be negative or very small. But when we compare two regions, such as the south Atlantic region, and the New England region and look at the changing shares of the national employment in textiles, we see that the south Atlantic region has been increasing its share, while the New England region has been

decreasing its share. So if we were to make projections for the south Atlantic region on an industry by industry basis, using textiles as an example, textiles would contribute a negative or a very small industrial mix factor, but this would be offset somewhat by a favorable share factor or regional mix factor.

On the other hand, in New England in textiles we would get again a negative or a very small industrial mix factor for textiles, and this would become compounded by a declining share factor. So in this way we quantify growth due to industrial mix and growth due to locational factors. This gives us a projection of employment to some future bench mark year.

We then tie population figures and income figures to our employment projections through the use of trends and historic multiples. For example, an area might have had, let's say, 2.5 residents for each employed person at some point in the [75] past. We would look at the trend of this ratio, how many people was an individual worker in a given area able to support. Then projecting the trend in this population to employment multiple into the future we would get a target figure for this multiple, then applying the target figure for the multiple to our employment estimate we would then get a population estimate and we do the same thing for the income to employment multiple and get get an income estimate.

Well, using this methodology, Exhibit 19 presents population projections for Connecticut and Bridgeport and New Haven areas as well as New England and the United States for the 1970 to 1980 period. It shows that metropolitan Connecticut is expected to grow somewhat more rapidly than metropolitan New England and metropolitan United States. Metropolitan Connecticut being expected to grow by some 20.6% as compared to metropolitan New England's 13.5% and metropolitan United States' 18.3% over the 1970-1980 period.

Metropolitan Bridgeport is expected to grow somewhat more rapidly than metropolitan Connecticut, growing at a rate of 22.1% over the ten-year period, and metropolitan New Haven being expected to grow slightly more

rapidly than metropolitan New England growing at a rate of 16.5% over the ten-year period.

THE COURT: Would this be a convenient time to break for lunch?

[76] MR. BENTKOVER: I think we are nearing the end in perhaps another 10 or 15 minutes, at the most.

THE COURT: We'll break for lunch, then, until 2:15.

(Recess taken for lunch.)

[77] Afternoon Session

(2:15 p.m.)

THE COURT: Are the parties ready to proceed?

MR. BENTKOVER: Yes.

BY MR. BENTKOVER:

Q Dr. Glantz, when we adjourned I asked your views on the amount of economic growth which would occur in Connecticut and in the Bridgeport and New Haven SMSA, and I believe you were discussing Exhibit P-19 on resident population, had you finished with that exhibit?

A I had.

Q I direct your attention to Exhibit P-20, would you examine that and tell the Court how that affects your views on the amount of growth which you expect to occur?

A Exhibit P-20 presents employment projections for employment for the United States, New England and Connecticut between the years 1968 and 1980. It shows that employment in metropolitan Connecticut is expected to grow somewhat faster than in metropolitan New England and at about the same rate as metropolitan United States. Metropolitan Connecticut growing at a rate of 27.4 per cent over the 12 years as compared to metropolitan New England's 24.0 per cent over the 12 years, metropolitan United States growing at the same rate as metropolitan Connecticut, 27.4 per cent.

[78] For the New Haven and Bridgeport areas the exhibit shows that the New Haven area is expected to grow at about the same rate as metropolitan New England; metropolitant New Haven growing at a rate of 23.8 per cent over the period as compared to metropolitan New

England's 24.0 per cent over the period. The Bridgeport area is expected to grow slightly less rapidly than metropolitan New England, growing at a rate of 21.4 per cent over the 1968 to 1980 period.

The employment projections and population projections from Exhibit P-19 and P-20 are summarized in Exhibit P-21 which presents the average annual rates of growth. Since the periods are different by two years, this presents a handy comparison and again shows the same things that were shown in Exhibits P-19 and P-20.

Exhibit P-22 presents personal income projections for the United States, New England and Connecticut for the years 1968 through 1980. It shows that metropolitan Connecticut is expected to grow somewhat more rapidly than metropolitan New England, and again somewhat more rapidly than metropolitan United States; metropolitan Connecticut being expected to grow by 80.4 per cent over the '68 to '80 period as compared to 73.2 for metropolitan New England and 74.4 for metropolitan United States.

The Bridgeport and New Haven area are projected to [79] grow at about the same rate as metropolitan New England and metropolitan United States over the '68 to '80 period; metropolitan Bridgeport being expected to grow by some 76.4 per cent over the period and metropolitan New Haven being expected to grow by 74.3 per cent over the period.

THE COURT: What has been the growth from 1968 to 1972? Is it in line with the projection? I mean it seems very high. Does that mean that economists project a 76 per cent increase in Bridgeport in personal income?

THE WITNESS: Over the 12 year period?

THE COURT: Well, yes. We have already had at least four of those years which have passed.

THE WITNESS: What we are doing when we make a projection is to project the trend. There are going to be some oscillations around the trend. Given the cycle, you can't anticipate a business cycle. What we have seen from the '68 to '72 period has been a downswing in the cycle. Now we are going to come back up and we are going to continue to oscillate around the trendline.

What these trends—what these projections show is the trendline rather than individual oscillations around the trendline for the cycle.

[80] THE COURT: Well, to get a 76.4 increase or change, in four of those 12 years there has been a decline, then for the next eight years there is going to have to be like an 85 per cent—

THE WITNESS: Yes.

THE COURT: —change to make up not only the 76.4, but also for the decline that you did not figure on, I assume.

THE WITNESS: Right.

THE COURT: All right. Go ahead.

A (Continuing) Similar projections for a different time period, 1969 through 1990, are presented in Exhibit P-11 through P-14. P-11 presents population projections through 1990, P-12 presents employment projections, P-13 personal income and P-14 per capita income projections.

These projections are for the State of Connecticut, New England and the United States, and when we adjust for the differences in time periods covered they are quite comparable to the projections that we have just gone over. What—

THE COURT: I just say this to inject a little bit of humor, perhaps, in this complicated and very economic thing. I hope someone tells Congress about these projections so they will be aware of Federal judges' salaries in the next eight years.

[81] A What these projections show in summary is that by and large Connecticut is expected to grow more rapidly than New England and, in many cases, more rapidly than the United States; and that the Bridgeport and New Haven areas can be expected to share in Connecticut's growth.

Exhibits P-23 and P-24 present similar projections made by local planning agencies for the greater Bridgeport region and the New Haven metropolitan area, and these projections are also in line with the projections that we have just gone over.

Exhibit P-25 presents population projections for the Bridgeport and New Haven telephone additions made by

Southern New England Telephone, and these projections are also in line with the projections that we have just gone over.

All of the projections seem to indicate that Connecticut is expected to grow somewhat more rapidly than New England and that the individual areas, Bridgeport and New Haven, may be expected to share in this growth.

Q Dr. Glantz, you have discussed the exodus of firms from Boston and New York into the Connecticut area, does this exodus lead you to conclude that the Bridgeport or New Haven SMSA will at some time become a part of a metropolitan area which includes New York or Boston?

A I don't think so. There has been a substantial [82] exodus of business firms from metropolitan New York into Southern Connecticut and, if anything, this trend has been accelerated, but the point that your question is directed to, are these areas going to become sufficiently integrated as to become one area, would necessitate commuting patterns between New York and Bridgeport or Boston and Bridgeport, and past experience has shown that when a firm relocates, it takes very few of its personnel with it and tends to pick up employees from the local labor markets that it moves to. Thus we would have very little commuting between the former location of the firm and the new location of the firm.

I think that the 1970 census data on commuting bear this out. Despite the large number of relocations from metropolitan New York to southern Connecticut, there is still an insignificant amount of commuting between the two areas, and I think that this will continue into the future; that firms relocate, but we don't have commuting; firms hire new employees at the new labor market and we still maintain two separate and distinct labor markets.

MR. BENTKOVER: Thank you, Dr. Glantz. We have no more questions.

BY THE COURT:

Q I notice in your chart that Connecticut residents employed in New York—I guess that is P-7, and perhaps this [83] not the relevant chart for my question—but I

do not see a figure for the State of Connecticut. In other words, the percentage of Connecticut residents that are employed in New York. You have taken—I don't know, about a half a dozen or a dozen towns. I see, for example, Greenwich is not listed, although Stamford is, and, of course, it is quite high, it is 21.63. I just wondered why Greenwich is not in there, or some of the other towns that have the reputation of having many Connecticut residents who commute daily to New York.

A These figures that you are referring to as towns are not really towns, these are labor market areas as defined by the Connecticut Labor Department, and the name represents the name of the labor market area, which includes a small cluster of towns. So that Greenwich would be included in one of these figures.

Q The left hand column, "Labor Market Area," and then the next column, "Number of," et cetera, includes the entire State of Connecticut divided up into labor market areas, is that it?

A That's correct.

THE COURT: All right. Thank you.

CROSS-EXAMINATION

BY MR. REYCRAFT:

Q Dr. Glantz, I understand you are employed by the [84] Federal Reserve Bank of Boston, is that correct?

A That's correct.

Q How long have you been employed in that capacity by the Federal Reserve Bank of Boston?

A Since June of 1971.

Q During all of that time what have your duties been?

A My duties have been to, as I have said before, monitor the economy of New England, keep track of economic conditions in that area, to edit out publication, the New England Economic Indicators, which is a monthly digest of economic conditions in New England, and to conduct studies and analyses of the New England economy, one of which was published in the New England Economic Indicators this past year.

Q What was your employment prior to being with the Federal Reserve Bank of Boston?

A I was an instructor of economics at Temple University.

Q And prior to that time you were—

A I was in graduate school.

Q Graduate school. Right. For what purposes are the—is the information gathered that you gather in your duties as an economist with the Federal Reserve Bank?

A We act as a—the Federal Reserve Bank of Boston acts as a clearing house of regional economics, the statistics. We perform this as sort of a public service. It is not in our [85] mandate by our charter, but historically the Federal Reserve Bank of Boston has taken an interest in regional economic conditions going way back; and this was heightened by economic conditions in the 1950s; but virtually all of the Federal Reserve Banks maintain a regional economic analysis unit.

Q Do any of your duties involve working on bank mergers?

A They do not.

Q Have you participated at any time as an employee of the Federal Reserve Bank in the competitive analysis of any bank merger?

A No, I have not.

Q Do you have any background or experience which you believe would qualify you as an expert in banking markets?

A No, I do not.

Q Did you participate in any way in the preparation of Definition of Standard Metropolitan Statistical Areas contained in Exhibit P-1?

A No, I did not.

Q This is an excerpt from a pamphlet put out by the Bureau of the Budget in 1967, isn't that correct?

A That's correct.

Q And you accepted it literally, and you have explained very well what a standard metropolitan area is in the view of [86] the Bureau of the Census, isn't that right?

A That's correct.

Q Now, can you tell me the purposes for which the Bureau of the Census has prepared this definition or uses this concept?

A As I have said, the purpose of defining a metropolitan area is to provide a reasonable unit of analysis when conducting area studies. The concept of a metropolitan area pre-dates the Standard Metropolitan Area and goes back to the old Standard Metropolitan Area.

The Bureau of the Census has for some time facilitated in conducting economic research and the notion of a metropolitan area is an outgrowth of that.

Q There is another concept known as the Standard Metropolitan Area?

A This pre-dates the Standard Metropolitan Statistical Area.

Q Is there now any other concept which is used by the Bureau of the Census for regional analysis, economic analysis, other than the Standard Metropolitan Statistical Area?

A There is.

Q What is it?

A State Economic Area.

Q How are the State Economic Areas defined?

[87] A They are defined in terms of broad regional trade patterns rather than economic labor markets.

Q So the Standard Metropolitan Statistical Area concept is one that relates primarily to the attributes of the county as a place of work, isn't that right?

A Not the county as a place of work. A labor market as an economy—I think—you know, perhaps it's appropriate at this time to compare what a metropolitan area is as opposed to a state economic area.

A state economic area typically encompasses more than one metropolitan area, and the criteria for these areas to be included in the state economic area would be substantial inter-metropolitan or interarea trade relationships. But this doesn't mean that a state economic area is a spatial economy in a meaningful sense. It is not a self-contained labor market. Typically, it encompasses more than one labor market. But what it does do is to define definite trade relationships.

Q Well, doesn't Standard Metropolitan Area, the concept of it, relate primarily to the attributes of the county as a place of work? That's what the definition—that's part of the definition under criteria of metropolitan characteristic one page 1 of P-1?

A It does, but it uses the county as a building block, and as a criteria as a place of work we are interested in counties [88] that are metropolitan in nature, that are essentially urban rather than rural; and this notion of a county as a place of work is defined in such a way that we eliminate what are essentially rural counties in the country that may have a sufficient number of its labor force commuting into a central county and thus by the rest of this definition would be included in the metropolitan area.

Q Well, is there a standard metropolitan area concept applicable to New York, for example?

A There is.

Q What is it?

A It's the New York Standard Metropolitan Statistical Area.

Q Is there another concept applicable to the New York area?

A Yes, there is.

Q What is it?

A The New York Standard Consolidated Area.

Q You have described—well, P-1 describes the criteria followed in establishing a standard metropolitan area, what are the criteria followed to establish a regional area, the regional area you have just referred to?

A There are two Standard Consolidated Areas in the United States, they tend to be atypical, New York and Chicago. [89] The reason for this is that the central city of the Standard Consolidated Area is so large and so dominant that by notions of economic integration we would include more than we ought to include. It typically —well, not typically, in the case of New York, and Chicago, would necessitate the inclusion of several metropolitan areas in Northeastern New Jersey, which by other definitions, by definition of a Standard Metropolitan Statistical Area would be classified as separate entities. They

do have separate economies. The Newark, New Jersey Standard Metropolitan Area has an identity of its own. The Jersey City Standard Metropolitan Area—Metropolitan Statistical Area has an identity of its own. What does exist is a substantial amount of economic integration amongst these areas. Such that the census decided that it had been best to create a unique classification for these two areas.

Q Well, what counties are included in the New York Consolidated Area?

A I don't know offhand.

Q Is Fairfield County included?

A I don't know offhand.

Q I believe you will find that it is, Doctor. What is included in the New York Standard Metropolitan Statistical Area? By the way, that's a matter of public record, is it not, as to what is included in the New York Consolidated Area?

[90] A Yes, it is.

Q If Fairfield County was included in that area what would that mean to you as an economist?

A I would say that Fairfield County had substantial amounts of social and economic integration with the New York City area.

Q Dr. Glantz, did you participate in the preparation of Government's Exhibit P-3?

A No, I did not.

Q Did you participate in the preparation of any of the exhibits P-1 through P-26?

A Yes, I did.

Q Which ones?

A Exhibit P-12. Might I ask a question at this point?

THE COURT: Well, it is not customary. You are wondering what he means by "did you assist"?

THE WITNESS: Right.

THE COURT: If there is some problem you are having in answering his question directly, you may so state. What is on your mind?

THE WITNESS: While I did not actually gather the data for many of these exhibits, by telephone conversation I indicated the types of data that I would like to

have gathered for me, and the members [91] of the Justice Department so gathered that data.

Q Did you, for example, request that the data set forth in Exhibit P-3 be put together?

A No, I did not.

Q Well, can you tell me which exhibits you did request to be prepared?

A Exhibits 6, 7, 8, and 9 on commuting data, Exhibit 2 on comuting data, Exhibits 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24 and 25.

Q But none of these exhibits were prepared by you, isn't that right?

A With the exception of Exhibit P-12.

Q All right. Do you know who prepared them, by the way?

A No, I do not.

THE COURT: Before we go on to something else, there is some confusion in my mind. I better clear it up as we go along. If Bridgeport is in Fairfield County, which it is, and Bridgeport is its own SMSA, and if Mr. Reycraft is correct that Fairfield County is in New York's SMSA—

THE WITNESS: It is not.

THE COURT: Oh, it is not?

MR. REYCRAFT: If I may volunteer at this point, [92] your Honor? There are two concepts. There is one as the New York Standard Consolidated Area in which more than one SMSA is included, if I understand it correctly.

THE COURT: I see. And that is what you were referring to?

MR. REYCRAFT: Yes, sir.

THE COURT: I did not pick up the difference in your question.

THE WITNESS: May I bring out a point here?

THE COURT: Yes.

THE WITNESS: When we talk about economic integration, it is possible for one area to be economically integrated with more than one area. The Office of Management and Budget would then place that area in the SMSA of the area with which it has the greatest amount

of economic integration. So when we get into New England, this becomes a problem because the metropolitan areas in New England tend to border one on top of the other, and when we come into the fringe areas there would be economic—sufficient economic integration for them to go either way. They are classified in the metropolitan area with which they have the greatest amount of economic [93] integration.

Now, Fairfield County was placed not in the New York City SMSA because it had more economic integration with the Bridgeport SMSA. However, it is included in a broader, more loosely defined notion of a Standard Consolidated Area.

Q Well, you now recall, Doctor, that Fairfield County is included in the New York Standard Consolidated Area?

A It is.

Q You didn't recall that earlier?

A Well, I will accept your saying that it is. It is public knowledge. I don't think you would lie.

Q Dr. Glantz, do you know whether Fairfield County is included in the Federal Reserve District which includes Boston?

A It is not in terms of our Federal Reserve District, it is in terms of our economic research.

Q How are the Federal Reserve Districts divided between the First and the Second Districts?

A The Federal Reserve—First Federal Reserve District includes all of New England with the exception of Fairfield County which is included in the Second Federal Reserve District, New York.

Q The Second Federal Reserve District includes Fairfield County and New York and what else?

[94] A It goes out to Buffalo; it does not include all of New Jersey, it includes part of New Jersey.

Q How long has Fairfield County been included in the Second Federal Reserve District?

A I don't know.

Q Has it been included as long as you have had any familiarity with the Federal Reserve Districts?

A It has.

Q Do you know who made the determination or who

reviews the determination as to what cities or counties are included in the various Federal Reserve Districts?

A No, I do not.

Q Presumably they are made in Washington at the Federal Reserve Board?

A To the best of my knowledge, they were made once. And they don't change.

Q Do you have any knowledge of the criteria employed to establish Federal Reserve Districts?

A No, I do not.

Q Do you have any knowledge as to whether the Bridgeport Standard Metropolitan Statistical Area is a meaningful economic market for the manufacture of ordnance?

A What do you mean by "meaningful economic market for the manufacture of ordnance?"

[95] Q Well, you are an economist and I am not, so I have to ask you whether you—whether it means anything to you?

A Economics don't talk in terms of spatial markets for specific products or the manufacture of specific products, they tend to talk about spatial economies in terms of spatial labor markets rather than specific products that are produced within those labor markets.

Q Right. When you begin talking about the production of products or services, then you are not talking in labor market terms, is that right?

A We do not typically talk in terms of products associated with labor markets other than noting and interpreting the fact that different labor markets tend to produce different products. This is the concept of the industrial mix that I had gone over before.

Q Dr. Glantz, in Exhibit P-15, which you have testified was prepared in accordance with requests or instrutions which you gave the Antitrust Division attorneys, a number of products are listed within the Bridgeport labor market area, is there any implication to be drawn from the listing of ordnance, food, apparel, publishing and so forth with respect to whether this market, the Bridgeport Labor Market, is a meaningful market for any of those products?

A I still don't grasp what you mean by "meaningful market for these products."

[96] Q Well, do you have any idea whether Bridgeport is a market for ordnance?

A I still don't understand what you mean by "market for ordnance." Ordnance is produced in Bridgeport.

Q Do you know where it is sold?

A Nationally.

Q What about the other products listed on P-15?

A You can see by the figures that for each of the products listed there is some employment in the Bridgeport area in that product line. If that's what you mean, yes, you can see that.

Q Well—but does it mean that for any of these products that Bridgeport is a meaningful market? You know what a market is, don't you?

A Oh yes, I know what you mean by a market, but I am not certain I know what you mean by a market for a specific product.

Q Well, isn't a fact that all of these products have markets broader than the Bridgeport Standard Metropolitan Statistical Area?

A Not necessarily.

Q Well, can you tell me any that you think is limited to the Bridgeport Metropolitan Statistical Area?

[97] A What we would have to do is to compare the employment in each individual industrial category in Bridgeport to that of some bench mark, either the state, the region, the nation as a whole, and compare the proportions of employment in each industry in the region in question, Bridgeport, to the bench mark area.

If we assume that each of these areas have the same per capita consumption patterns and employ essentially the same technology, then we can say that if one of these areas—if the Bridgeport area employs proportionately more of its labor force in the industry in question, then it would be said to export a proportion of its employment or the product produced in proportion to the surplus employment to the bench mark area.

Q Well, take electrical equipment, for example, you

can't really draw any conclusions, can you, as to what the market is for electrical equipment from Exhibit P-15?

A Not by P-15 alone, no.

Q Are there other exhibits between 1 and 26 which you have covered that would allow you to draw such a conclusion?

A No, there are not.

Q Would the same thing be true of machinery?

A Yes.

Q Fabricated metals?

A Yes.

Q Primary metals?

[98] A It would be true of all these industries.

Q And that includes on the second page finance, insurance and real estate, doesn't it?

A It does.

Q So—

THE COURT: Again, I'm sorry, gentlemen. A few moments ago you were having difficulty communicating with terms, now you two are communicating very well, I'm lost a little bit. I'm not sure what's meant by looking at Chart 15, and determining whether there's a market or there is no market, either way, in the Bridgeport area. For example, I can see with—well, for example, if Hershey, Pennsylvania has its own SMSA, we know Hershey Candy is shipped all throughout the country, and your question is: can he tell by looking at P-15 how much is consumed just in Bridgeport alone without being exported out of Bridgeport—

MR. REYCRAFT: No, sir, well, if I may state—I'm making an argument, really.

THE COURT: Yes.

MR. REYCRAFT: My argument is that the—and I believe the witness' testimony establishes the fact that—the Bridgeport standard metropolitan statistical area is an area within which labor markets—labor [99] forces are analyzed, and I argue, and I believe it is a fact, that that doesn't mean anything as far as the Bridgeport standard metropolitan statistical area being a possible market for banking, which is why we are here, and I believe that Mr. Clark is offering these exhibits for the

purpose of showing that the Bridgeport standard metropolitan statistical area is a relevant geographical market and an economic market, and I believe that that—if I understand the purpose of the witness' testimony, it is to establish that conclusion, and my position—and which I believe will be borne out by further testimony, as well—is that the standard metropolitan statistical area is really meaningless as far as banking markets are concerned.

For example, the Connecticut National Bank has many of its branches outside the Bridgeport standard metropolitan statistical area, so that I think that these exhibits—

THE COURT: Maybe what's confusing me just a little bit is the difference between labor market—I mean, isn't P-15 an indication of what the labor market is, that is: that there are—well, let's take for 1971, 4,710 people were employed in—

MR. REYCRAFT: Other manufacturing.

[100] THE COURT: —other manufacturing, I should have taken something—2,000 or so in April, apparently, I mean that tells us something about the labor market in Bridgeport.

MR. REYCRAFT: Yes, sir, and it is interesting, but I don't see that it has much to do with the banking market in this case.

THE COURT: But you are saying—you are using the word "market"? What? Consumer market?

MR. REYCRAFT: Well, no, sir. A market is an area within which a firm sells its products, and it is coterminous with the phrase "section of the country", when Congress used the word "section of the country" in Section 7 of the Clayton Act it intended, I believe, to impart a market concept. So that the government has the burden of showing in a merger case that there's an adverse impact on competition in some market, and I understand Mr. Clark's offering of these exhibits to be directed toward trying to establish that the Bridgeport standard metropolitan statistical area is a relevant section of the country within which to analyze this merger, and I think he is equating standard metropolitan statistical area and section of the country with a banking market, and my—

and I am arguing that it is really meaningless in anlyzing [101] banking markets.

THE COURT: All right. Just so I'll have a concrete idea in another field other banking so we won't get too close to the case. Take food. We know that in 1971 1.7% of the population in Bridgeport was employed in food products, manufacturing food products, right?

MR. REYCRAFT: Yes, sir.

THE COURT: Now, your question was: does he know from that figure how much of the food was consumed—

MR. REYCRAFT: I think the problem that you and I are both having, your Honor, is that I don't understand what relevance that has to the case, that's my problem, and I don't think it has any.

THE COURT: Well, I'm not sure it does. Maybe it does and maybe it doesn't, but I'm trying to understand your use of the word "market", because you have used it several times, and there's a labor market, there's a consumer's market, there's a—I was wondering how you were using it.

MR. REYCRAFT: Well, in our view the banking market includes at least the State of Connecticut. The Supreme Court's definition, the way it is described in the Philadelphia case, was the area within which a bank [102] may branch or merge, and that includes the State of Connecticut in this case, and I am arguing, therefore, that the number of people employed in the manufacture of food or ordnance or apparel in Bridgeport doesn't really have any relevance to that, and that's—

THE COURT: How about the finance, insurance and real estate, is that close?

MR. REYCRAFT: Well, it doesn't show that this is a market. It doesn't show that—who is in competition in this area, who is not. I think even as far as finance is concerned, it is meaningless as far as this case is concerned.

THE COURT: All right.

BY MR. REYCRAFT:

Q Doctor Glantz, you have—in some of these exhibits from which you testified, and I believe the first one

is P-11, there are population projections, and you go up to the year 1990. Are any of these projections projections which you personally have made or participated in making?

A No, they're not. Economists don't typically engage in the necessary details to make this sort of projection for a large number of areas. It becomes an extremely time-consuming and costly procedure.

What is typically done is to examine the projections [103] made by specialists in the field, institutions that specialize in making projections, to test these projections as to their underlying methodology, to see if it's sound, to examine the reasonableness of estimates, and once you have satisfied yourself as to the underlying methodology and to the reasonableness of their estimates, then you go ahead and use it. The Federal Reserve Bank of Boston does that as do several businesses and banks in the metropolitan Boston area that I know of, and nationally, that I know of.

Q Are you familiar with any announcements that have come out in the past several weeks concerning changes in population projections based upon re-evaluations of birth control methods and other things that may impinge upon population growth?

A No, I'm not.

Q You didn't note an article in the New York Times that indicated that the nation was reaching a zero population growth?

A I didn't note that article.

Q If it is a fact that the current estimates indicate that the nation is approaching a zero population growth, would that affect the projections that are set forth in P-11?

A In once sense, they would, but generally they would not. As I indicated, in order to use a projection you have to compare it to some bench mark. A projection of an individual area in and of itself is essentially meaningless. You compare one area's [104] to another area's growth. In terms of zero population growth, this would alter all of the projections, but unless you have some notion that people in one part of the country are

using birth control pills as opposed to people in another part of the country, I don't see how it would affect one area vis-a-vis another area.

Q Well, I understand that these things are likely to impact equally upon different areas of the United States. But they would be relevant, would they not, to the overall projections of population growth in the United States, would they not?

A They would.

Q And if, in fact, there had been revised estimates of population growth which had been published in the past few weeks, that would affect all these projections, would it not?

A It would affect the absolute number, but not the relative magnitudes.

Q It would affect the percentage of projected growth increased for the population of the United States and for each of the subdivisions, thereof, would it not?

A It would, but by the same token, if one area was growing at twice the rate of the nation before the revisions were made, after the revisions were made the rate of growth would change, but the relative magnitude will remain the same. It would still be growth at twice the rate of the nation. Unless you have some reason to believe that the population in [105] one part of the country uses birth control more than other parts of the country.

Q Well, if you refer to P-11 for a moment and look under "Percent change, 1969 through 1990," and go to the bottom of that column and across from "Connecticut", you will find 43%. Now, if there had been changes in the estimates of population growth which indicate we are reaching a zero population growth, wouldn't that affect that estimate?

A Along with all of the others in the column under 1969 to 1990.

Q It would affect the 43%, would it not?

A Yes, it would.

Q Now, all of these—what about the income projections, where did they come from for 1990?

A As I said before, the methodology employed here

has been to project employment, and then through the use of trends and historical multiples between income and employment in a given area we then tie the employment projections to the income projections and come up with an income projection.

Q So the income projections are dependent upon the employment projections—

A Yes, they are.

Q —is that correct? All right. Are you familiar with any recent changes in estimates as to the growth of [106] the population and the work force in the State of California? If that's outside of your area and you have no knowledge, you can say that.

A Not specifically, no.

Q Have you known of any occasions when the statisticians who have been making these estimates have been wrong in making their projections?

A Yes.

Q Do you know of any period in our history when there has been anything comparable in its possible impact upon population to current birth control methods which now exist?

A Are you talking about the country as a whole?

Q Yes.

A Or individual areas?

Q The country as a whole.

A That's out of my field, I really couldn't say.

Q All right. In Exhibit P-14 were you—you have requested, apparently, this is one of the exhibits which you asked to have prepared, which refers to 1990, information. This again is dependent upon the basic population estimates, isn't it?

A No, it is based on the basic employment projections.

Q Does that have anything to do with population projections?

A Both income and employment are tied to our—both income and population are tied to our employment projections.

[107] Q Well, isn't it the other way? Isn't employment tied to population?

A No, it is not.

Q In other words, you can figure out how many people are going to be employed before you know what the population is?

A Yes, you can. Jobs tend to lead people, when we're talking about the employment in a given area, we talk about the job opportunities that are likely to exist in that area. Based upon the demand for that area's products. If one area is experiencing a very large increase in demand for the products that it is producing, it will have relatively higher demand for labor than other regions. This will cause the demand for labor in that area to rise relative to the supply of labor in that area, which would cause upward pressure on the wage rate in that area, the combination of increased job opportunities and rising wage rates would tend to attract labor people from other regions so we would have immigration, migration is positively effect to employment opportunities in an area.

Q I understand that population will shift among various labor markets depending upon the job opportunities, but when we consider the United States as a whole, isn't it a fact that when you make estimates for what the employment will be in the future that it is necessarily tied to the total population in the United States?

[108] Q In a certain sense, in a short run, it is limited by natural increase in population, but it is not necessarily tied, we would just have a disequilibrium situation, in which the demand for the labor will exceed the supply of labor.

Q Isn't it a fact that the employment statistics are derived in part from the population statistics?

A Which employment statistics are you referring to?

Q Employment in the United States.

A Quite obviously, employment in the United States as a whole at any given time is tied to the population of the United States at that particular time.

Q Right. And if you are estimating ten years from now, if you are 50% high on your population projections, isn't it pretty probable you are going to be 50% high on your employment projections for the United States as a whole?

A It is reasonable, yes.

Q Isn't it probable?

A Not necessarily.

Q Well, do you know how those persons who make these projections compute the labor force in relation to the population?

A You have a labor force participation rate, which essentially measures the number of people in working age that are working as a proportion of those that are able to work.

Q And that's a fixed ratio, is it not?

[109] A Excuse me—no, that is not a fixed ratio, that has changed over time and is changing and depending upon economic conditions, that will exist at a given time, there could be sufficient pressures brought to bear that would change that ratio.

Q Well, making such projections to date, at this particular time, isn't there a fixed ratio which is used for employment to population which is being used to figure out how many people will be employed ten years from now?

A Well, what is done is we look at the trends in the labor force participation rate and project those trends into the future and use that to tie population to employment. But when we're talking about a specific area, the direction of causation goes from employment to population rather than population to employment.

Q Well, again, you are talking about shifts between labors markets of a fixed work force, but when you talk about the work population of the United States as a whole, it is a fact, is it not, that if the population as a whole is less than projected the employment force as a whole is going to be less than projected, and roughly in the same proportion?

A Not necessarily.

Q All right. What—can you tell me what the result would likely—to be of a 50% error in the population projection for the next ten years upon the estimated work force ten [110] years from now?

A I would say that a 50% error in population projections for the United States as a whole over a ten year period would undoubtedly cause the employment estimates to have an error. I wouldn't venture to say that it would

be a one to one relationship and, therefore, we would have a 50% error in our employment projections, because the other factor involved, the labor force participation rate, could also change. For example, if the United States as a whole were to experience a large increase in demand for output, okay, such a demand that would cause a shortage of labor in the country as a whole, a shortage of labor that could not be met by the existing labor force, it is entirely possible that the higher wages and the better job opportunities that results from this shortage of labor would attract marginal workers into the labor force, so that people that ordinarily might not work would enter the labor force. So in order to make—you know, to answer your question, I'd say that, you know, undoubtedly there would be an error when you are talking about errors of the magnitude of 50% in one of your projections, undoubtedly it is going to affect some of the others. But whether it is a quid pro quo relationship, I wouldn't say.

Q Referring to P-17, I believe you testified, and I am not sure whether you referred to this particular exhibit or not at the time, that it was your opinion that the Connecticut [111] unemployment rate would decline, is that right?

A I did.

Q Have you made any estimate as to how much and when?

A No, I haven't.

Q And on what did you base your opinion?

A On the historical performance of the Connecticut economy over past business cycles, relating that to the current business cycle which for the State of Connecticut appears to be generally typical of past business cycles for the State of Connecticut and the performance of the unemployment rate in the State of Connecticut, and in the two SMSAs that we have been discussing here over the past several months is in line with past experience. And past experience has shown that the economy of the State and these two areas within the State tends to experience a much more serious, a steeper recession, and it also tends to recover and recover fully.

Q All right. P-17 refers to, in a footnote, to data

for 1947 through 1956, the source is a telephone conversation, July 31, 1972. Did you participate in that telephone conversation?

A No, I did not.

Q Do you know who the participants were?

A No, I do not.

Q So you are not in a position to vouch for any of the numbers in this exhibit, are you?

[112] A I am.

Q You are?

A Yes.

Q Which ones?

A In general, the latter statistics are consistent, in fact, equal to the statistics that are published by the Federal Reserve Bank of Boston. Ones that I have seen since I have been employed at the Federal Reserve Bank of Boston.

Q You hav checked those out?

A I haven't checked them out by way of research, but I have noticed that they tended to be equal.

Q They looked pretty good to you?

A Yes, they did.

Q Now, are you familiar with the—a concept called the labor market area?

A I am.

Q Is that the same as or different from the standard metropolitan statistical area?

A The labor market area is a concept used by state departments of employment security or state labor departments. It is not necessarily coterminous with metropolitan areas, no.

Q Do you know what the New Haven labor market area is?

A It includes the New Haven standard metropolitan statistical area, plus Madison.

[113] Q Why is Madison included?

A I do not know.

Q Do you know what the Bridgeport labor market area is?

A It is coterminous with the Bridgeport SMSA.

Q Are you famaliar with any other labor market area within the State of Connecticut?

A From published sources, yes.

Q In any respect do any of them differ from the standard metropolitan statistical areas?

A In the case of New Haven, yes.

Q Any others?

A Offhand, I could not say.

Q The New Haven labor market area, according to Plaintiff's Exhibit P-18, includes the Towns of Bethany on the one hand and North Branford on the other, do you have an opinion as to whether those towns are in any geographic market which is relevant to this case?

A I'm not familiar with the geographic market at hand. I'm testifying as to the economy of the Bridgeport metropolitan area, the State of Connecticut and the New Haven metropolitan area. Whether or not this is applicable to the case at hand is out of my field.

Q All right. Now, earlier—referring to P-22— earlier the Court asked whether you had any information which [114] would indicate that—what the validity was of the projections which are set forth in this exhibit. Are there any numbers at all that were available to you for the years 1969, 1970 and 1971 for Bridgeport or New Haven which would allow you to test these estimates against what in fact has occurred?

A As I have indicated before, these are long run projections and around any long run trend you are going to have cyclical oscillations. In the years you just indicated, we were on the down-swing of a recession. You can't test long run projections giving short run data.

Q Do you know whether those who made these estimates predicted that there would be a down-turn between '69 and '72?

A That doesn't enter into the projections other than the fact that if 1968 was a—an extraordinary year of—in terms of, let's say, it was a recession, that necessarily would have been taken into account. If 1968 is considered a normal year, then they would just go on and make their projections on that basis, ignoring swings around the projection. They're not interested in year to year changes, but rather in the long run trend.

Q Do you know who the people are who made these projections?

A The individual persons involved?
Q Yes.
A No, I do not.
Q Have you had occasion to review any of their work sheets [115] or any of their underlying data? If, for example, they made an overoptimistic assumption with respect to the first four years, would you be familiar with that?
A No, I would not.
Q What is the National Planning Association?
THE COURT: Before we get off that, have you ever done this, have you ever looked back to their projections for 1968 to '68, that is, the National Planning Association projections, and then compared it—their forecast with what actually happened? I mean, for example, we know that they predicted—or we don't know what they predicted. We know that the metropolitan United States percentage change from 1960 to 1968 was 54.5 increase, percentage increase. Have you ever gone back to see what they said about it in 1960?
THE WITNESS: They were in business in 1960. Or at least they weren't in the business of making regional projections.
Q So they have no track record?
A No, they don't.
Q What is the National Planning Association?
A National Planning Association is an organization in Washintgon, D.C. which conducts economic analysis and makes projections for the country and regions within the country.
[116] Q Is it an agency of the United States?
A No, it is not.
Q Is it a private foundation, or what is it?
A It is a private organization.
Q How are they funded?
A I'm not familiar with their funding.
Q And you don't know who makes these projections?
A Not the individual individual—not the individual persons involved.
Q Well, do you know who has overall supervisory responsibility for them?

A No, I do not.

Q Exhibit P-23 takes us up to the year 2020. Do you know who would be wiling to step forward and take responsibiity for that projection?

A No, I do not.

Q Well, a footnote says it is Clinton Bogart Associates. Do you know who they are?

A No, I do not.

Q Do you know whether Mr. Clinton Bogart made that projection?

A No, I do not.

Q Now, you testified earlier that Exhibit Twenty—P-23 is an exhibit that was prepared at your request by the [117] government staff, is that right?

A In the sense that I requested the government to gather projections made by various institutions. I did not request this specific institution's projections. It was brought to me because it represented the projections of a local agency.

Q You asked them to put together whatever they could find that was available?

A Yes. I specifically requested the National Planning Association BEA.

Q But as far as Clinton Bogart Associates, you wouldn't be willing to testify, would you, that you are satisfied that their projections are reliable?

A No, I would not.

Q Would you be willing to make such a statement for the Regional Planning Agency of South Central Connecticut?

A No, I would not.

Q Do you know who on the Regional Planning Agency of South Central Connecticut made the population projections which are set forth in P-24?

A Mr. Norris Andrews.

Q And who is Mr. Norris Andrews?

A He's director of that agency.

Q Did you review any of this work?

[118] A No, I did not.

Q So you have no idea really whether those projections are accurate or not, do you?

A No, I do not.

Q Now, P-25, which you have testified, also, was an exhibit prepared at your request, gets us up to 1990, and it indicates that the source is the Southern New England Telephone Company. Do you know where they got their data to make these forecasts?

A No, I do not.

Q Did you review any of their work papers?

A No, I did not.

Q Do you know who the individual is who made these projections?

A No, I do not.

Q Have you—do you know whether in defining standard metropolitan statistical areas any consideration is given to newspaper or radio or television advertising?

A To the best of my knowledge, it is not.

Q I believe you testified earlier that there are only two regional consolidated areas in the United States, and what is the correct term? Standard?

A Standard consolidated area. There are only two of such areas in the United States, is that right?

[119] A That's correct.

Q Los Angeles is not such an area?

A No, it is not.

Q Has it been?

A No, it hasn't.

Q Why, in your opinion, are Chicago and New York the only two areas of the United States which are accorded this treatment?

A Because of their large size and their close proximity to other metropolitan areas there tends to be a lot of contact betwen these two areas. If, for example, there was no City of Newark, then the towns that—or the counties that are included in the Newark standard metropolitan area would then have sufficient economic integration with the New York area to be considered part of the New York standard metropolitan statistical area. But the fact that the New York metropolitan area does not sufficiently dominate the economy of the City of Newark to obviate its individual identity necessitates examining the relative amounts of economic integration between these counties and the central counties of New York and the central

counties containing the City of Newark. On the basis of relative amounts of integration in commuting between the counties in question, the New York central counties and the Newark central counties, the OMB has decided to classify the Newark area as a separate [120] entity.

Contrast this, for example, with the City of Yonkers, a city with a population in excess of 100,000, which does not have an identity of itself. They do not tie the counties adjacent to Yonkers to the City of Yonkers when they are constructing an area. Because the City of Yonkers does not have an identified economy of its own, it is completely and totally dominated by the New York economy.

This is not the case for Newark, New Jersey and other metropolitan areas in northern New Jersey, and similarly the metropolitan areas around Chicago.

Q Well, it is a fact, is it not, that in the eyes of the Bureau of the Census, the New York and Chicago standard consolidated areas are unique in the United States?

A They are.

Q Do you have an opinion, Doctor Glantz, as to whether the Hartford area is integrated—Hartford economy is integrated with either the New Haven or the Bridgeport economies?

A I don't feel it is.

Q And on what do you base that conclusion?

A On the 1970 census data on commuting patterns between the two areas.

Q Do you know whether there are any Hartford banks which have offices in New Haven?

[121] A I don't know.

Q Would that be relevant to the question as to whether the—this was a market for banking purposes?

A I am not.

MR. BENTKOVER: I object to that question. The witness hasn't been qualified on the subject of banking markets.

THE COURT: In fact, he expressly disclaimed any expertise in that field.

MR. REYCRAFT: All right. I'll withdraw that question, your Honor.

THE COURT: Pardon me?

MR. REYCRAFT: I'll withdraw the question.

THE COURT: Very well.

Q You did testify, I believe, Doctor, that it was important in some respect, at least in your view, that there was a transportation network which links New York, Boston and Connecticut, did you not?

A I did.

Q Now, was that important in your view in terms of the economic integration of the area?

A No, it was not.

Q Perhaps I misunderstood you. Then, why was it of any significance in your testimony? [122] When we refer to economic integration, we're talking in terms of specific commuting patterns between the two. The highway network that links the New York metropolitan area and the Boston metropolitan area facilities trade. It would also facilitate commuting, but hasn't to a great extent.

When I refer to the importance of this highway network, what I was referring to was the fact that a business firm located near this network could tap the resources, not on a commuting basis, but definitely, for example, on a consulting basis without too much trouble. It could get—if it was manufacturing specific products, the access to this highway network would facilitate shipping its products out by truck to all of New England, to all of the northeast, so that a location on this network is a very favorable thing.

Q And it also facilitates, does not not, the shipment of products into the Connecticut area?

A It does.

Q And it facilitates the travel of persons such as consultants you mentioned, into the Connecticut area?

A It does.

MR. REYCRAFT: All right. I have no further questions.

THE COURT: Redirect examination.

[123] REDIRECT EXAMINATION

BY MR. BENTKOVER:

Q Doctor Glantz, counsel asked you whether you knew the name of the person who was involved in preparing projections, and I believe you said you didn't. Do you know the methodology which was used in preparing the projections?

A I do.

Q And how did you determine what the methodology was?

A By examining the accompanying test to their projections which stated explicitly the methodology that was used.

Q And have you satisfied yourself as to the validity of the methodology?

A I have.

Q Have you used NPA projections in any circumstances prior to this case?

A I have.

Q Do you know whether regional economists generally rely upon data and projections from NPA?

A Typically, I would say that they do, but I can't make a blanket generalization that all regional economists do this. It is typically done, though.

Q Are you aware of the reputation of NPA as far as the validity of their projections?

A I am.

[124] Q And what is that reputation?

A They are highly esteemed in the field.

Q I'll ask you the same questions about the BEA projections of the Department of Commerce of the United States, do you know the methodology involved?

A I do.

Q And have you satisfied yourself as to the validity?

A I have.

Q And have you used these projections at other times prior to this case?

A I have.

Q And what is the reputation of the BEA?

A It's very good.

Q I believe Mr. Reycraft pointed out an article he read concerning birth control recently and asked you for your opinion on the effect of that on population trends. Assuming that birth control has been used prior to the time these trends were projected, wouldn't that have been involved in past—in the basis for a future projection?

MR. REYCRAFT: I object to that, your Honor, he said he's not familiar with the article.

THE COURT: Yes, I was going to say it is speculative, but I'll take the answer, and what weight I'll give it later, I will decide later. But I may [125] give it no weight at all or I may give it the weight that counsel for the government wishes. I'll have to do that after I have analyzed his qualifications again through the minutes. But I will take all his opinions. We have had opinions from him on almost everything in this field, so one more won't hurt.

THE WITNESS: Could you repeat the question, please?

THE COURT: Yes, in effect, do you have an opinion as to whether the recent birth control methods were taken into account by people who prepared these charts?

MR. BENTKOVER: I didn't quite ask whether the recent birth control—I asked whether birth control had been used at the time of these projections in 1968 or '69 and it had some effect on the past trend, would that have affected the projections into the future?

A It would.

Q So to that extent, what would you conclude as to whether or not these projections do take into account the use of birth control?

A I would assume that they generally take into account the use of birth control in that the population projections [126] reflect past trends in population and the links between population to employment to the extent that birth control had influenced past population figures, it would then influence the projected trend and would be included.

Q I think Mr. Reycraft in one of his questions made a —used the figure that there might be a 50% overstatement of population. Do you have any basis to believe

that there is any overstatement because of birth control or any other reason? Of the population trends?

A Not to my knowledge.

Q Defense counsel also seemed interested in which particular tables you asked us to prepare and which we presented to you, and many of the tables we gave you involved data such as employment, population and income. Are those series the sort of data which you would require in order to give the testimony which you have today concerning your assessment of future trends?

A They are.

[127] Q And if we hadn't given those tables to you would you have asked for them?

A I would have.

Q Are the sources which are listed in the footnotes of those tables generally accepted sources of valid information?

A They are.

MR. BENTKOVER: And I might note at this point that the Government has given these exhibits to defendants a month prior to trial and we have yet to receive any information that there is a single inaccuracy in any of the tables.

Q Defense counsel also asked you about the New York Consolidated Area, does the fact that Fairfield County —if it is in the New York Consolidated Area, would that affect the patterns of commuting between Bridgeport SMSA and the New York area?

A The patterns of commuting, you know, are a fact whether or not, you know, they would alter the definitions, you know, is really a moot point. The definitions state that a fixed level of commuting must exist between two areas before they are—between two towns in New England and between two counties in the United States before they are considered part of the same SMSA. The fact that the amount of commuting between these areas does not meet that bench mark, you know, is sufficient [128] to exclude it from the area.

Q And the New York Consolidated Area, then, does not imply that there is any substantial amount of commuting between Bridgeport and the New York area?

A No, it does not.

MR. BENTKOVER: We have no more questions.
THE COURT: Re-cross?
MR. REYCRAFT: No, sir.

BY THE COURT:

Q Dr. Glantz, to one question you were asked you said you were not an expert in banking markets, is that correct?

A That's correct.

Q What does the term "banking markets" mean to you so that you recognize you are not an expert in it? What does that term mean, "banking market?"

A I would say that this would be the market in which the product associated with banking was sold.

Q Does your Boston Federal Reserve Bank have such experts, to your knowledge?

A They do.

Q Now, I have, of course, learned the definition of SMSA, and someone took that definition and broke down SMSAs for Connecticut. Do all economists agree—I mean, as I look at this I say to myself why isn't the Town of Milford in New [129] Haven's SMSA rather than Bridgeport's? Could some other economist say, if he started just with the definition, would he not come up with different SMSAs for the State of Connecticut?

A No, he wouldn't.

Q Is there some uniform agreement here?

A As I said before, we start with a central city with a population of 50 thousand or more, and in New England we begin to add on to this central city contiguous towns which have an established commuting pattern, that town and the central city.

Q Well, take Milford, why would all economists say that the tests for Milford are fulfilled with New Haven but not for Bridgeport?

A Well, I qualified that before. I said that it is possible for an individual town to meet the established crtieria for more than one SMSA, but further on in the criteria to OMB has stated that they will assign an individual town to a given SMSA if it has more economic integration with that SMSA than with any other if the

town in question meets the economic integration criteria with more than one SMSA.

Q Would one of the criteria be banking?

A Strictly commuting patterns.

THE COURT: I see. Thank you, very much, Doctor. I assume you have another witness to go forward?

[130] MR. BENTKOVER: Yes, your Honor.

THE COURT: But you may recall that I said that if we get close to the four o'clock hour that I would prefer to recess than start. I know that the lawyers fully understand, but sometimes witnesses that come in wonder why judges keep such limited hours, so I would appreciate if you would explain to your witnesses why we are not on the usual ten to five schedule.

MR. CLARK: Yes, sir, I will. No problem.

THE COURT: If there is any question about unduly holding a witnes, I would prefer that you not hold him in the courtroom if you think there is a chance he may get on so he does not wait all day only to be dismissed. On the other hand, if he likes to be here, and expects to be here, it is fine with me.

We will recess until 10:30 tomorrow morning.

(Whereupon court was adjourned at 4:00 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

vs.

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR.

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 11th, 1972

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[132] Appearances:

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[133] THE COURT: Are the parties ready to proceed?
MR. CLARK: Yes, your Honor.
THE COURT: Very well.
You may call your next witness.
MR. CLARK: At the outset, your Honor, I would like to raise this point that came up yesterday. There was some extensive cross examination by Mr. Reycraft of Doctor Glantz regarding the so-called New York standard consolidated area, which, as we know, is one of two larger areas defined by OMB for some of their purposes, and much of the cross examination was premised on the statement that Fairfield County is included in the New York standard consolidated area.

Doctor Glantz testified that he was not aware that it was, Mr. Reycraft stated that it is. However, I think it is appropriate now to correct that immediately and we have ascertained that Fairfield County is not a part of the New York standard consolidated area, has—in fact, the area is popularly titled the New York Northeast New Jersey Standard Consolidated Area, and contains the New York SMSA and four or five SMSAs from New Jersey.

But Fairfield County is not and has never been, and

as far as we know, there are no plans to make it a part of the New York standard consolidated [134] area.

I'm aware that what I have said is not competent evidence, just as Mr. Reycraft's statement was not.

THE COURT: Yes.

MR. REYCRAFT: I'll stipulate that that's correct, your Honor.

THE COURT: Very well. And the stipulation may be entered as of record. But I did make a mental note yesterday that the—when we launched into that area the question was framed in a way, assuming that Fairfield County—

MR. CLARK: Yes.

THE COURT: —and so forth, and I made a mental note that that assumption would have to be proven by affirmative proof later on by the defendants or would collapse by its own weight.

So, thank you for bringing that to my attention. But I took the evidence with the note that the defendant sooner or later would have to prove that point. Because the witness first said he didn't know, then he said: well, if you tell me it is so, I have no reason to doubt you. But that wasn't enough for me to accept it as affirmative evidence.

MR. CLARK: Yes, sir.

MR. REYCRAFT: Your Honor, may I just say that [135] what I had in mind was the Regional Planning Association which does include Fairfield County, but we'll get into that in our own evidence.

THE COURT: All right.

MR. CLARK: We call Doctor Neal Murphy.

[136] NEAL MURPHY, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you state your full name and address for the record, please?

THE WITNESS: My full name is Neal B. Murphy. My residence is 7 Park Street, Orono, Maine.

DIRECT EXAMINATION

BY MR. CLARK:

Q Doctor Murphy, would you briefly outline your formal education?

A Yes. I received the Bachelor's degree in Bachelor of Science with a major in accounting at Bucknell University. I received the Master's of Science with a major in economics from Bucknell University. My PhD is in Economics from the University of Illinois.

Q Have you applied your formal training to the study of banking markets?

A Yes. I was first employed on the research staff of the Federal Reserve Bank of Boston. In that capacity I was—conducted studies of banking markets, various aspects of banking markets, direction and performance, and was responsible for the staff research work on all merger applications for the First Federal Reserve District, as well as holding company [137] applications; First Federal Reserve District includes all of New England except Fairfield County.

Q And where were you employed following the Boston Federal Reserve?

A Following my experience with the Federal Reserve Bank of Boston, I was on the staff of the research staff of the Federal Deposit Insurance Corporation. I conducted similar studies and had similar responsibilities in that capacity.

Following that I was promoted to chief of the economic research unit in the direction of research in the FDIC. My responsibilities there included supervising a staff of 25 people, ten PhD level, professional economists, ten junior professional economists, five clerical. Our main responsibilities were to conduct statistical and economic analyses of the performance behavior of the banking industry, to prepare economic analyses of legislative proposals and to do the research work on all applications in which the corporation had either advisory responsibility for an advisory opinion or a decision on some of them, in all merger applications.

Q And following the Federal Deposit Insurance Corporation?

A I spent a short period on the staff of the President's Commission on Financial Structure and Regulation.

Q What is your current occupation?

[138] A My current position is Maine Bankers Association, Professor of Finance at the University of Maine, College of Business Administration of the University of Maine at Orono.

Q Have you published in this field of bank market structure and performance?

A Yes, I have three monographs or books in the field. I have—most of my published work consisting of twenty papers and professional—in professional journals, ten papers in other publications—has been in the area of analysis of banking and financial markets.

Q Are you engaged in other professional activities?

A Yes, currently I am associate editor of the Journal of Finance, I'm on the editorial board of Journal of Bank Research and Review for several other professional journals. In addition to that, I am a consultant to the research division of the Federal Deposit Insurance Corporation and am engaged in a consulting capacity from time to time by various banking organizations in the American Bankers Association.

MR. CLARK: Your Honor, I offer Doctor Murphy as eminently qualified to testify as an expert witness on the subject of bank markets and analysis.

THE COURT: Your offer is recorded for the record. You may proceed.

Q Doctor Murphy, what are the benefits of competition [139] to the American economy?

A Well, in determining discussion of the benefits we have to establish some criteria for general—general criteria for measuring benefits, we usually think in terms of the performance of the economy in providing goods and services efficiently to meet the needs of consumers, customers, businesses and whatever customers may be involved in transactions.

The performance in terms of competitive markets is usually described in terms of the price of the particular

good or service being—being sold, in terms of the desire quantity as opposed to what's actually produced and in terms of the quality of the particular products.

We generally think that competitive markets yield situations which produce desirable performance results in those terms.

Q How do economists customarily evaluate the extent of competition?

A Well, the general procedure is to—we must consider what—notion of a market. When economists think in terms of a market, they talk in terms of the area. Well, the first thing one must define is the product which is being traded, the commodity or product or service or whatever is being traded in the market.

Once that is determined, you have to determine the [140] geographical delineation of that market. Geographic delineation is determined by that area in which the decisions as to output and prices are affected by participants in the market.

Q Having then defined the market, how do economists evaluate the extent of competition within it?

A Well, generally one—the economists proceed by examining the structure of the market, and by the structure we consider the number and size distribution of firms in the market.

An example of this, one end of a continuum of market structures would be the monopoly or single seller. If we agree on the terms of the product, then the geographical delineation, we can just observe the number of sellers. If we have one seller, we have a monopoly. Economic theory suggests in this situation we have—there would be no incentive for the monopolies to enervate in terms of new products. There would be strong incentive for him to charge prices higher than would exist in a competitive market, maybe strong incentives for him to produce less than what's desired and what would result from a competitive situation.

Generally, in the American economy, our public policies towards these situations is to either eliminate them or regulate them. The public utilities, a case of the regulated monopoly, a decision is made for one reason or an-

other, [141] it is more efficient to, say, produce electricity or some other—telephone service in an area with the single seller and having decided this, then the general procedure is to regulate the prices that this firm can charge in the market.

Now, at the other end we generally think in terms of competitive market and we define this usually in terms of the number sellers being fairly large, and I will say in a little while what's sufficient for large enough. A large number of buyers and sellers generally the product being sold is one in which is difficult to differentiate. It is very homogenous. So one seller can't differentiate his product in another seller very well.

In addition, we generally think of the ease of entry and exit into the particular kind of market. And the result—well, also we think that this—sufficient information and communication, such as the buyers and sellers are informed as to what's happening, that this information is available at a relatively low cost, and that the result of this is a situation in which no one buyer or seller can buy his own actions influence the outcome in terms of price and quantity or the quality of the product.

The best approximation of this kind of situation would be organized exchanges where—where goods are standardized and homogenous.

[142] We generally think in this particular situation, prices and outcomes are determined entirely by forces of supply and demand as highly impersonal and this—we generally think that this situation results in a desirable performance characteristic.

Between these two extremes there are a variety of market structures. These generally go from—if you—define these, two, generally as you move along the continuum, we can generally state that the closer approximation to the competitive market, the better the performance.

In any particular situation that we view, the—any particular market having made these general comments, it then becomes an empircal question subject to verification as to whether this—the extent to which this relationship holds.

[143] Q What do economists customarily use as a measure of market structure?

A Well, once having defined product and defined the geographic delineation of the market, economists generally take a measure—they measure the output of all the firms in the market and then take the share of that output produced and sold by the largest firms and construct the concentration, the proportion of business held by these and form a measure of concentration as approximately the market power of the largest firms in the market. In the case of the monopoly as I indicated earlier, concentration ratio would be a hundred per cent. Competitive markets concentration ratios would tend to be lower.

Q Is there then a relationship between structure and performance in banking?

A Well, as a result of my experience and my responsibilities in the positions that I mentioned before, I was both responsible for conducting studies, responsible for supervising other people conducting studies, in reviewing those outside my own jurisdiction, and my opinion of the results of these analyses is that there is in the banking field that hypothesized relationship between structure and performance is verified. That is, that generally performance characteristics are better in less concentrated markets.

Q I turn, then, to the definition of a product market. [144] Doctor Murphy, what is a commercial bank?

A A commercial bank is a financial institution charered by either the state or federal government, which typically offers a broad range of financial services. It has high diversified sources of funds. One of the most important of which is the demand deposit service or checking account service. This is virtually—with minor exceptions, is virtually unique to the commercial banking industry and is highly valuable in the sense that it permits the user to have access to a highly integrated efficient payments mechanism and payment system that permits funds to be transferred at very—very efficiently from one area to another. This is a very important service that the industry provides.

There are various services tied to this, such as the accounting services for certain customers that are highly related to their procedures in making payments, such as account—or payroll accounts, depending on the type of business in which the customer is, as long as his payments needs are related to some activity, banks typically can provide this service easily because they're all involved in the making up of payments and processing and so forth, so there are some services which are directly tied to the billing, payroll and so forth tied to this particular service.

Q What are other sources of funds?

[145] A Well, generally the commercial bank has the savings account, which is a—an account which an individual or economic unit opens, and this account—funds are withdrawable and there is a stated return on the account. On the funds in the account to the individual. In addition, there are certificates of deposit which is an arrangement whereby the—there's a specific maturity and the funds must be left—left in the bank for the period of maturity, there's a specified return, there are sometimes provisions that funds can be withdrawn, but usually a penalty.

In addition to this, commercial banks can borrow from other banks from what is known as the Federal Funds Market, and they may borrow from a federal reserve bank if they happen to be members of the federal reserve system.

When it comes to their uses of funds, they have to hold a certain proportion of their assets in the form of highly liquid assets. This is generally determined by state or federal statute. Beyond this, they have a broad diversified range of capabilities, including government securities, both federal government, state and local government, to which they're a major supplier of funds to state and especially local governments.

They are involved in making personal loans, loans to businesses. Especially now when we discuss loans, business firms [146] for certain classes of business firms, the commercial bank is the sole supplier, the most important supplier of credit.

In addition, there are real estate mortgages and various other miscellaneous investments which commercial banks can make.

Q Is there an interrelationship between these services as they apply to the business customer?

A Yes. Typically, we have what's known as the banking relationship or the customer relationship which includes a package of services that includes at least the credit, short-term credit services and the demand deposit account.

Various other services may be involved, depending on the needs of the particular customer.

We have a—generally, the arrangement is that the business firm needs a line of credit or needs credit to conduct its business, and it negotiates with the bank for what's known as a line of credit, and this line of credit is determined in part by the credit worthiness of the borrower, and also there's a commitment, either implicit or explicit, that he maintain his deposit accounts usually in some proportion to the line.

So these are tied together, and this is unique service provided by this institution.

Q What is the significance of this range of services to the individual bank customer?

[147] A Well, in general, the individual bank customer has the ability because of the diversified broad range of services to conduct all of his business, or a substantial part of his banking business, in one—one location. This is highly valuable—certain classes of customers, especially those that would have somewhat smaller balances. You think for a moment that for the small deposit holder, say, with several hundred dollars or less than a thousand dollars, any gain that he could make by going to different institutions would be economically dissipated by travel costs, cost of his time, gasoline costs, et cetera. So this is very important for—for smaller customers, this convenience factor.

We can see a historical—well, I'll cover that later.

Q Does any other financial institution offer a comparable package of services?

A No.

Q Are you—

A Not at one place.

Q Are you familiar with Exhibit P-28, Doctor Murphy?

A Yes. P-28 is a list of services available at defendant banks. I have examined this list and my conclusion is that the—the defendants are—offer the broad diversified range of services usually associated with commercial banking.

[148] Q Would you refer to Exhibits P-30 and P-31?

A Yes. Exhibits P-30 and 31 are what's known as the report of condition, or sometimes referred to as the call report for defendant banks. I have looked at this, examined it and this reaffirms my assessment of Exhibit P-28, that the defendant banks, indeed, have a diversified business and offer a wide variety of services to the public.

Q Would you interpret these forms briefly?

A Well, you can see that on the front of it we have a balance sheets which is more or less a summary of the sources and uses—or the assets and liabilities of the—of the—bank. You can see that there are listed time deposits of individuals, partnerships and corporations, time and savings deposits, deposits of various other institutions.

Then we see a discussion—or a listing of the cash accounts, treasury securities, various other kinds of securities and loans, among other assets.

If we turn to the back of the call report, we see that there's much greater detail as to the breakdown of the loans and deposits, and we can see that the defendant banks are—have a diversified asset portfolio, diversified loan portfolio of the kind usually associated with commercial banking.

Q You are aware, aren't you, that mutual savings banks exist in Connecticut?

[149] A Yes. Mutual savings banks are thrift institutions whose primary source of funds are the savings—various kinds of savings accounts of individuals. These institutions have different kinds of asset powers than commercial banks. They typically are—are closely tied to the mortgage market, and a substantial part of their assets will be held in the form of real estate loans.

In addition to this, they hold private securities, both

securities and equities of private corporations, which is bonds and equity for private corporations, which is not—which power is not available in general to commercial banks.

The—in addition, they hold some personal loans and, of course, liquid—liquid assets. Personal loans are restricted to the—certain percentage of their assets in the State of Connecticut.

Q Would you describe some of the services which commercial banks offer and which savings banks do not?

A Well, most important is the demand deposit service.

THE COURT: I'm sorry. What?

THE WITNESS: The most important is the demand deposit, the checking account service.

A They do not make short-term business loans, they generally do not service general business customers, and in general, they don't have the—they do, of course, have personal loans to some extent in our—and, as I say, are [150] heavily engaged in either direct investment into the capital markets, meaning bonds and equities, or—or the real estate market.

Q Does this mean that there is no competition between commercial banks and savings banks?

A No, there is competition for the savings account and there's competition in the personal loan area, and the real estate area. However—the real estate loan area. However, there is no—the fact that they do not have the—the business loan or the demand deposit capability means that business firms are generally not excluded from savings bank business.

As far as the savings account is concerned, of course, there is competition here. However, once again, we see that there's been an historical differential between the mutual savings bank rate paid on savings accounts and rates paid by commercial banks. This indicates that for at least some class of customers, the one-stop banking service or capability is—is more valuable than the differentiation in rates.

As I said before, of course, there is no business customers involved.

Q Would you elaborate on the convenience factor for individuals, the significance of one-stop banking?

A Well, if we think in these terms, we think in terms [151] of cost and benefits of doing one thing as opposed to the other, that one-stop banking permits or—capability to conduct business at one location means that the benefits to—are substantial compared to any gains which might be obtained by a small deposit customer or a small loan customer or a small—well, deposit—when demand depositor wouldn't be able to go to a savings bank, but a savings deposit customer would dissipate any potential gains very quickly from the inconvenience involved in banking at several locations.

Q Doctor Murphy, would you refer to P-29?

A Yes. Exhibit P-29 is a list of directors for both defendant banks. We can see that for the Connecticut National Bank directors it shows both their—their major professional—business or professional oc'—ocupation and their other affiliations. We can see that there are nine common interlocking relationships between Connecticut National Bank and People's Savings Bank.

If we look at the—similar list for the other defendant, New Haven National, we can see that the interlocking relationships aren't as extensive, but there are several directors that are—seem to be involved for the Connecticut Savings Bank and the New Haven Savings Bank.

Q What is the significance of these interlocking relationships?

[152] A Well, in general, in my responsibilities in various positions we were asked at the corporation to investigate this, and our general conclusion was that in most cases this tended to diminish whatever competition may have existed between the various types of institutions, these interlocking relationships.

Q I now turn to the subject of definition of geographic markets. What is the significance of convenience in commercial banking as it relates to the geographic market?

A Well, we think in the same terms, terms of cost and benefits and customer alternatives. And we see that for most customers, bank customers, either individuals—espe-

cially individuals—that the convenience factor tends to localize these markets.

Once again, from a cost benefit point of view, the cost of going outside the normal kind of work patter, say, the journey to work, the shopping patters, et cetera, in order to conduct business, would—would tend to overcome any benefit that might be obtained that way.

The same thing would be true for business customers who need—especially business customers who need services such as retail customers that have to deposit cash and retail trade customers that have to deposit currency and have a place to obtain currency. These kinds of business transactions [153] would be locally limited. The cost of having employees going all over the area to get cash would be excessive.

Similarly, on the part of the banks, for business customers, the ability in cost of assessing a business relationship depends to some extent upon the—the manager of the bank, of the particular business and the particular area in which the business operates.

Now, I have—it seems that it would be logical to assume that banks are more familiar with their local surroundings than they are from out of—areas types of economies and areas in which the business might operate.

For that reason on both the part of the customer and the part of the bank for the smaller—smaller accounts, there tends to be a localizing factor, and these are—we said before when I indicated discussion of the market, that these are determined in good part by customer alternatives, and customer alternatives are determined by their cost and benefits of searching out different kinds of alternatives, and we see that for the individual customer and for the business customer, this cost may be substantial in relation to the—the value of the transaction.

And if you have several hundred dollars in a savings account, you could dissipate any savings very quickly just in telephone calls to look around to get a better return on it in some [154] other part of the country.

Q Is this convenience factor significant even for the largest bank customers?

A No, using our same framework of the cost and benefits associated with searching out alternatives, it becomes important for both credit transactions and deposit type transactions to search out these things for larger firms, if we're talking about transactions involving, say, several billions of dollars, then the savings of, say, even a half percent on a loan, or a quarter of a percent, becomes substantial.

In addition, the capability of having deposits, remittances, say, to a firm handled efficiently and handled near money market centers where a firm can make transactions in and out of the money market, managing its cash balance, means that it is—these firms have a definite —there's an economic rationale for them to search out these alternatives. By money market transactions I mean short-term large transactions that are not available to the individual customer, for a larger firm these things are available and excess funds can be invested for as short as a day or two, and if the transactions are large enough, it makes them important to serve the kinds of banking relationships that can provide these services.

So there's a substantial incentive for them to go search things out and they spend substantial resources in [155] managing these financial affairs, because of the size of the transactions involved.

Q Does the convenience factor become applicable to any portion of the business of these largest bank customers?

A These largest bank customers, generally referred to as wholesale customers, will tend to have a range of banking needs, some of which are of the wholesale nature, whereas some of which may be highly localized by convenience factors, also.

Consider a firm with large—large firm that may have plants in different parts of the county. For its cash management and its credit transactions, it may search alternatives all over the country, indeed, perhaps different parts of the free world. However, for payroll services, they will—for that particular plant, they usually pick a local bank at which either employees do business or where checks of that—drawn on that local bank will be honored in the area where the employees live.

So it depends on the type of business for one of these wholesale or national firms to determine whether it is localized or has very little in the way of convenience constraints.

Q Doctor Murphy, are you familiar with the concept of the SMSA?

A Yes. The SMSA is defined in Exhibit P-1 as an integrated economic area with a central city of certain size, [156] 50,000 or more, and contiguous political subdivisions added on the basis of the amount of economic integration usually based on commuting, type of labor force and so forth.

Q Is the SMSA concept useful in defining a banking market?

A Well, yes. In general, we—thinking in terms of this convenience factor, we think in terms of such things as the journey to work as creating alternatives, that is: an individual can conveniently bank at either—near his home or at his place of work. We think of shopping patterns. Shoppers can bank near their home or near where they intend to do most of their shopping. It is the kind of patterns, living patterns and transportation patterns that determine alternatives.

Now, it turns out that the SMSA concept being defined by commuting patterns tend to be, at least at the outset, useful starting point for determining a localized banking market.

Q In your opinion, is this concept applicable in defining banking markets in Connecticut?

A Yes.

Q Would you refer to P-32 and elaborate on that?

A Well, if we look at Exhibit P-32, that is: the map, we see that the New Haven and Bridgeport SMSAs are outlined in blue, and we see that the triangles with red are offices of the Connecticut National Bank and the squares with green with the [157] number 7 are the offices of the New Haven National Bank—let me amend that, slightly. They show representation of maybe more than one office. This shows towns in which the defendant banks are represented.

Q And given the location of these offices, then, what is the significance of the SMSAs as approximation of banking markets?

A Well, we can see that the defendant banks are located in various parts of each of their headquarter SMSAs among other places.

Q And is that related then to the convenience factor—

A Yes.

Q —we discussed?

A Right.

Q Would you now refer to Exhibits P-3 through 5, Doctor Murphy?

A Yes. Exhibits P-3 through P-5 describe the intra-area, the intra-SMSA change in population growth and population patterns. We look at P-3 for the Bridgeport standard metropolitan statistical area, we see the—for example, in 1950 the—57.5% of the residents of the SMSA lived in Bridgeport City, and if we look at 1970, we see that 49.2% of the population lived in the SMSA, the figures are virtually reversed.

[158] If we examine P-4, we see similar figures with an even greater variation than—shift from the center city to the outlying areas in 1950, 62.2% of the population lived within the center city, New Haven City, and that that figure had gone down, that percentage had gone down to 38.7% in 1970. Then if we look at Exhibit P-5, we note that within both SMSA—first, if we look at Bridgeport, we see that the changes in population, the percentage changes, we see that the population has been declining, 1.4% decline from 1950 to 1970 within the center city, while the outside areas had a growth of—within that period—98.5% increase in population.

The figures are even more dramatic for New Haven with—over the same period, 1950 to 1970, a 19.4% reduction in the population in the area and 100.6% increase in the new population.

Q How does P-76 relating to bank offices of—in these areas relate to this?

A Well, if we examine Exhibit P-76, we see the pattern of offices within these two SMSAs. We see, for example, in New Haven City that 1954, 64.7% of offices were located inside the center city. This percentage went down to 42.2% in the 17-year period from—between 1954 and 1971.

For Bridgeport we see a similar pattern, 65% of the offices inside the city, 40.7% inside the city in 1971. So what we note from these two exhibits is that population factors [159] within the SMSA shown a—a market decline in the importance of the central city in terms of population, substantial increase in the population, surrounding towns, and the branch office proportions show a very similar pattern, a very similar trend, that is: more branch offices opening in the—in the outlying adjacent towns of the SMSA.

Q Doctor Murphy, would you turn to Exhibits P-33 through 38, and give us a general description of them, please?

A Yes, Exhibit P-33 through P-38 are descriptions of business derived—well, for the main office of Connecticut National Bank, the location of where their business —from where their business is derived.

We see, for example, Exhibit P-33, which is for IPC demand deposits or individual, partnership and corporation demand deposits, that—well, for example, let us look there—this table is broken down by account size. Let us look for the smallest size account. We see that 58.6% of the number of accounts, demand deposit accounts, for the Connecticut main office come from the City of Bridgeport, while 91.2% come from the—from the entire SMSA, indicating that slightly less than 33% of their deposits are derived from the surrounding towns in the SMSA.

The figures are similar for the values of these deposits, with slightly more coming from the—from the city than [160] in the case of the—just the number of accounts. We—we look at the other exhibits, they are for IPC time and demand deposits—I'm sorry, time and savings deposits, commercial-industrial loans, installment loans from the main office, single payment loans and real estate loans.

We—I won't go through each particular column in detail, but we note a pattern whereby the main office of Connecticut National Bank derives a substantial amount of business from the surrounding towns in the SMSA indicating that for people living in the outside areas that the main office is a useful alternative, and this is consist-

ent with our notion of the commuting patterns defining alternatives for these customers.

Q I refer you to Exhibits P-39 through 46. What, in general, do they refer to?

A Well, Exhibits P-39 through 46 are tables on a branch office basis for the—for Connecticut National Bank. These tables are much less—excuse me—much less detailed and refer to IPC deposits and loans, totals for both magnitudes.

They—they are not broken down by size, class, and they're generally much less detailed presentation here. But—some of the main office tables.

Q Would you discuss in particular P-41?

A Yes. P-41 is the—the figures for the Shelton office [161] of the Connecticut National Bank. We can see that the value of total deposits that—for the Town of Shelton, 76.6% of the business is derived from within the Town of Shelton, adjacent towns immediately abutting the Town of Shelton, the—17.2% of—of deposit business is derived from these adjacent towns.

If we look at total loans, we see that a smaller proportion of loans are generated in the Town of Shelton, 59.4%. In the adjacent towns, 27.5% of the value of loans are—are derived from these adjacent towns. And in addition, if we look at the remainder of the Bridgeport SMSA, we see that another 12.5% of loans come from other nonadjacent towns still within the SMSA.

Q What is your conclusion regarding the significance of this business which comes from adjacent towns?

A Well, I think it indicates or is consistent with our notion that—that even for—for offices that are smaller than the main office, that there is a substantial amount of business which is generated from surrounding areas suggesting that the—once again, that patterns, transportation patterns determine alternatives.

Q And would you refer also to P-43?

A Yes. P-43 is the—is a similar table for the Connecticut National Bank office located in Orange, and that we see that—once again, for deposits, that 52.6% of these [162] deposits are derived from the Town of Orange and

that from the adjacent towns we have 36.9% of the business.

And if we examine that a little closer, we'll see that—that 30.8% of that business comes from two towns, Milford and West Haven.

If we look at the loans, we see that there are more loans in dollar value coming from the adjacent towns than from the—from the Town of Orange.

Q P-44, Doctor Murphy?

A P-44 is the Milford office. Here we see that in Milford 80—

THE COURT: Excuse me. Your last was that if you add the Milford and West Haven, the total would exceed the Town of Orange?

THE WITNESS: No. Well, for—no. No, no. For deposits.

THE COURT: I'm talking about loans.

THE WITNESS: Oh, for loans? No, that wouldn't exceed. All adjacent towns would exceed, all adjacent towns are 44.1, the two, Milford and West Haven, sum to 27.5, which is still less than the—

THE COURT: I thought you said two towns alone exceeded Orange in loans?

THE WITNESS: Oh, no. The two towns I was [163] referring to was in the deposit column.

THE COURT: I see.

THE WITNESS: And we see a substantial amount of business coming from those two towns, 30%.

THE COURT: All right.

Q We were discussing P-44.

A Yes. P-44 refers to Connecticut National Bank's Milford office. It has 87.4% of its deposits being derived from the Town of Milford and adjacent towns 5.3%.

We see that for total loans this is 74% for Milford and 8.2% coming from the adjacent towns.

[164] Q And finally P-45.

A P-45 refers to the Ansonia office for a Total Deposits. We see that 44.1% or less than half of the deposit business for this office comes from the town of Ansonia, and 41.5% comes from the adjacent towns. With respect to loans we see a similar pattern that we have

seen be—in the other offices, 36.7% coming from the immediate town and almost 40% coming from the adjacent towns.

Q Now, P-45 refers to the Waterbury office of Connecticut National Bank, Dr. Murphy. Would you discuss that?

A Yes. The Waterbury office is located in the Waterbury SMSA, the city of Waterbury, and we can see here that with their office in Waterbury that they obtain 91.1% of the total—total business in the Waterbury SMSA. That 81.6% of business is from the—from the city of Waterbury; the remainder coming from the other towns in the SMSA. So that 10% of their business is from the adjoining towns as far as deposits are concerned. We see the pattern for loans at 62.6 coming from the city and from the total SMSA 83% of the business would—indicating 20% of loan business comes from the —from the adjacent towns in the SMSA, in that particular—in that Waterbury SMSA.

Q I refer you generally now to Exhibits P-48 through 60.

A Yes. Exhibits P-48 through 60 are similar tables for the New Haven National Bank, the first four dealing with the [165] first—the first six tables dealing with the main office which are identical to the—in form to the Connecticut National Bank tables we discussed in detail and the rest of them referring to specific offices of the New Haven National Bank. We find a similar pattern, that is, a substantial amount of business is—business being derived from the adjacent towns or adjacent towns to the SMSA, whatever particular office we are looking at. We see that patterns within the SMSA generate a situation in which alternatives are determined by—we see evidence that people exercising these alternatives and banking in various parts of the SMSA.

Q Now, Dr. Murphy, having examined all this data relating to the derivation of business of Connecticut National Bank and First New Haven National Bank, what is your opinion regarding the appropriateness of SMSA's as banking markets in this action?

A Well, I would consider that first of all with our

notions of convenience as a localizing factor, the definitions of SMSA in terms of these normal work patterns of —of employees combined with the information regarding population trends within the SMSA, and branching trends within the SMSA, combined with the information as to the actual locations of customers for the defendant banks, that in general this—for a—considering local banking markets that this SMSA is the appropriate approxi-
[166] mation of the banking market. There is one area in which there is some difficulty in drawing a line. If we look at the map we will see that the two SMSA's come together or interface each other at—between Milford and Orange, and we examine the branching patterns of the offices for defendant banks and those towns—two towns above that—Ansonia and Derby, and we noted a large amount of business being derived from other parts —from the surrounding towns, depending on which SMSA in which they're located. For that reason we have some difficulty in drawing a precise line exactly where the market ends and where the other one begins. We do, however,—we can make analyses—we will see as we go on in the case that we can make analyses verifying the particular line there, and it doesn't really effect our conclusions very much. So that in general I consider that SMSA's are an approximation. It's the best we can do.
[167] Q Now, referring to P-61 and 62, what do these exhibits show relating to the amount of business derived by defendants from New York?

A Well, Exhibits P-61 and P-62 show the location—excuse me—for defendant banks location of customers by state for IPC demand deposits.

We see that for Connecticut National Bank, that in New York, that 1% of the number of IPC demand deposits come from individuals or businesses, customers residing in New York, and 4.6% of the dollar volume.

For First New Haven National Bank we see that the—similar—the figures for the number of accounts coming from New York is less than 1%, .6%, and that of the dollar volume, the percent is 3.4%.

This indicates that the amount of business is negligible on the one hand, and if we look at the fact that

the number of accounts percentage is smaller than dollar volume—indicates that these accounts are of larger than average size for the—for the defendant banks.

If we look at Exhibit P-62, this is the list of deposit and loan customers of defendant banks with balances in excess of $100,000.00 with addresses in New York. We see that there are twelve such customers for Connecticut National Bank. These customers have local addresses in Connecticut and they also do [168] business in Connecticut—eleven of them do business in Connecticut, and nine of them have local addresses in Connecticut.

For First New Haven, we see that there are ten such customers, and that these—seven of these have local Connecticut addresses and ten do business in Connecticut.

Q What is the significance of this, then, as it relates to the figures which purport to show the amount of business derived from New York?

A Well, it indicates several things. First of all, there are some very large accounts in excess of $100,000.00, generally, we consider this as being business which is of the kind not bound by local convenience and operating in broader geographical markets.

Secondly, it indicates that these business firms also do business in Connecticut. So it is not quite clear whether they're—we consider Connecticut or New York customers.

Q Now, Doctor Murphy, would you refer to Exhibits P-6 through 9 relating to commuting between Connecticut and New York?

MR. REYCRAFT: Is that 69?

MR. CLARK: 6 through 9.

A Yes, Exhibits P-6 through P-9 show the commuting patterns for workers in both Connecticut and New York State. Looking at Table P-6, we see residents of various Connecticut SMSAs who [169] work in New York State, and we look at Bridgeport and see that less than 1% of the workers residing in the SMSA commute to New York State, and that for New Haven the percentage is so small it is not even calculated.

If we look at Exhibit I-8, we see the residents of New York City SMSA working in Connecticut, and we see

the—as far as the place of work in Connecticut is concerned, we see nothing in the ways of either the New Haven or Bridgeport SMSA being—being listed here. So it appears that the amount of commuting between the Bridgeport SMSA and the New Haven SMSA, New York State, is minimal.

Q What is the significance of that fact as it relates to the definition of these bank markets?

A Well, as we indicated before, the convenience patterns and commuting patterns tend to have a—tend to influence the location of customer alternatives.

It would be difficult to conceive of a local, small—an individual with a rather small account commuting to New York City merely to conduct banking business.

Q Now, Doctor Murphy, would you assume these facts: that the six largest banks in New York City derive between them total deposits of approximately $500 million from customers with addresses in Connecticut, and that these deposits are, by number of account, approximately 20,000 accounts.

[170] A That's 500 million?

Q And 20,000.

A 20,000.

Q Now, referring to P-91 and 92—

A Yes. Exhibit P-91, among other things, the third row down, shows total deposits for all commercial banks in Connecticut. We can see that that—see several things in comparing that hypothetical example. We have 500 million in deposits as opposed to five million six hundred seventy-eight million of total deposits in Connecticut banks. It is less than—less than 10%.

If we look at the Exhibit P-92, we can see that as of June 30th, 1970, there were two million seven hundred fifty-three—two million seven hundred fifty-three thousand three hundred three accounts in the State of Connecticut—for—with banks in the State of Connecticut. And that of that number, 20,000 is less than 1%.

In addition, if we look at this—at the numbers—hypothetical numbers you cited, we can see that the average size of account is $25,000.00, which is a pretty good sized account.

Now, having looked at those exhibits in which—as far as commuting is concerned, we see that this is some amount of commuting from the lower SMSAs adjacent to the New York State border, and we would consider in those cases that [171] there's a possibility of local alternatives for—for individual customers in the New York City area.

If those accounts were subtracted from the totals which you gave me here, I'm sure the average size of account would rise substantially, indicating that the transaction or the account would be something that would be in a broader geographical market and wouldn't be constrained by—would be outside the SMSA, anyway.

Q Now, assuming further that just under $100 million of these 500 million are commercial bank, correspondent bank accounts of Connecticut banks held in New York banks, what is your conclusion regarding that?

A Well, a correspondent—correspondent balances are balances held by banks near banks. Typically, banks, say —let's say in the State of Connecticut who hold balances in New York State—especially New York City banks—in order to derive certain services from these banks, is a way of compensating these banks for the services they provide.

Service which are such things as clearing checks, investment advice, holding securities for the—for the bank, the correspondent bank holding it for the bank outside the area, because the New York City bank is located in a money market center, such services as participating in loans where a particular loan might be larger than the legal limit for the [172] larger bank, a particular bank in Connecticut, in Connecticut, say, it could get the correspondent to participate in this loan with him. These are various kinds of services provided by some banks to other banks.

For that reason, I would consider these banks as a means of—these balances as a means of compensating these banks, and it is similar to compensating for other services that they receive elsewhere and would not consider them in terms of customer relationships and the kind of customers that we're interested in in this kind of action.

So I would subtract those right out immediately.

Q Would you assume further that the Boston banks, the four largest banks in Boston, derive total deposits in Connecticut of approximately $40 million which are held in approximately 2,000 accounts?

A Well, we can see those figures are even less significant, minimal, compared to the hypothetical figures you gave me for New York.

Q Doctor Murphy, is there any area in which Connecticut National and First New Haven are presenting competing with each other?

A Yes. In the—we—once again, if we look at Exhibit P-32, we see that both banks are represented in the four-town area of Milford, Orange, and then one—both in the— [173] one is Ansonia and one in Derby.

In this four-town area the defendants are—offices are quite close together and that they are in direct—direct competition.

You will recall from our earlier discussion of the difficulty of drawing a line, that we're not quite sure as to where the dividing line between the market goes, the problem in this four-town area, which is—as I say, Milford, Orange, Ansonia and Derby.

Q The exhibits which you discussed relating to the derivation of business by branch offices in this area?

A Yes, we examined the branch office business patterns for these towns and we found that a—there was a substantial amount of—of business being derived from adjacent towns. Much—much greater amount, it would seem than, say, some of the other branches of the defendant banks.

Q Doctor Murphy, how would you measure the impact of a merger or consolidation between two banks in actual competition with each other?

A Well, the procedure would be to determine the particular area involved and then measure the amount of business accounted for by both participants, determine what proportion that is of the total business, and then determine what—what then would happen to the level of concentration as a result of the combination.

[174] Q Would you refer to P-63 with that in mind?

A Yes. Exhibit P-63 shows the banks operating in this four-town area, banks which operate branches in those four-town areas—in this four-town area. If we look at the three columns furtherest to the right which describes the offices, deposits and deposit shares for the participating banks, we see that the First New Haven National Bank presently hold 38.9% of these deposits, whereas the Connecticut National Bank holds 19.4% of these deposits. They are ranked first and second in the market area.

The resulting combination would—would have the defendant banks holding 58% of the 19.4% increase in concentration, which is—which is, indeed, substantial.

Q Now, we noted before that there is some movement between these towns and that the offices therein derive some business from adjacent towns. Is that taken into consideration in this?

A No, that's not taken into consideration in this. However, if we look at the map again, we see that the surrounding towns are towns in which defendants operate offices, also, and that if we change the area definition to include some of the surrounding towns or not, the total—the ranks of the banks and the fact that they are leading banks in the area and that there would be a very substantial increase in concentration as a result of the combination would not change, no.

[175] Q Now, leaving the area between Bridgeport and New Haven aside, how would you characterize the nature of the competitive impact of this consolidation?

A Well, the competitive effect of this consolidation would be felt in potential competition between defendants in the future.

Q Would you discuss generally the meaning and significance of potential competition?

A Yes, potential competition refers to the capability of a firm not presently operating in a particular market area. The capability of that firm to enter the area and having a competitive effect, desirable competitive effect, in that particular area. This is particularly important in considering areas which are highly concentrated. Be-

cause this may be one of the only ways in which it would be feasible to deconcentrate these—these particular markets.

Q What are some of the ways, some of the effects which come about from a new entry of the type you describe?

A Well a new entry, a new firm coming into a market where it hasn't been operating in the past will generally tend to enervate in order to get a foothold and increase its market share, it will come in and offer, say, new service or improve services, this kind of competition may come in the form of having, say, lower rates on loans, or lower service [176] charges, it may come about in the form of expanded banking hours, hours on—say, banking hours on Saturday. It may come in the form of new kinds of inovation in, for example, say, Bangor, Maine, we just had a new bank entered, and it came in and it was offering a 24-hour banking service with automatic—with an automatic teller. So these kind of things are kind of things that new entrants typically do when they come into a new market in order to secure a foothold and to gain some appreciable market share.

Q Is the concept of potential competition accepted by banking regulatory agencies?

A Yes. The Board of Governors of the Federal Reserve System, and throughout the Federal Reserve System, the various reserve banks, in analyzing the cases for which they have responsibility, employ the concept of potential competition as does the Federal Deposit Insurance Corporation.

Q You said that potential competition is most significant when the affected market is highly concentrated, I refer you to Exhibits P-64 through 69. How would you characterize the concentration in the Bridgeport and New Haven SMSAs?

A Well, if we look—let's examine the Exhibits P-67 through 69 first. P-67 shows the banks operating in the New Haven SMSA at the end of 1954. It shows their number of offices, deposits and their share of total deposits in the SMSA. You can [177] see that for the three

argest banks, there's a market share of 69.1%, the leading bank being the First New Haven National Bank.

In P-68 we can see that between 1954 and 1970, that he concentration has increased from 69.1 to 83.3% in hat market. Once again, First New Haven having the lominant position.

P-69 is a concentration that shows concentration ratios for the same SMSA denominated by the number of accounts rather than dollar volume of deposits. We see here that the concentration ratio is 76%, and in this case, defendant denominating the ratio in this way, defendant has—second largest, just close to the largest bank in the area.

If we now switch to Exhibit P-64, we note that this is the corresponding table for the Bridgeport SMSA in December—at the end of December, 1954, we see that at that point the three largest banks held 86.8% of deposits and that for a similar table at the end of 1970, this was 87.8%, so there's been some minor increase in concentration, although it is quite high to start.

Note also that in both cases the Connecticut National Bank is the leading bank.

If we examine the—P-66, we see that the—similar table—table denominated—again by number of accounts rather than dollar volume, and we see for the three top banks the concentration ratio is 77.7%, which is virtually identical to the [178] dollar volume ratio, once again. Defendant bank the leading bank in the area.

So I would say that both markets are highly concentrated, and in the New Haven market the increase over the period has been substantial.

Q What are the relevant criteria used in measuring the significance of potential competition?

A Well, the first—there are several factors that are usually considered. The first criteria which is usually employed in determining whether markets are susceptible to the benefits of potential competition is to look at the economic area, the general economy of the area.

This is a measure as to whether the—if we consider the decision to enter to be essentially an investment decision, that is: to invest funds in a plant, in a branch

office, the return on that investment is determined in part by the economic health of that area, the economic viability. So what we look at generally is the economic aspects of the market area, things like employment, things like projected trends in employment, such things as population, personal income, these source of measures are important in determining whether this market is one which is—would be a desirable investment in the future.

In addition to that, once having presum'—if the market area tends to meet that test, we then move on to look at [179] the available entrants, and we have found through study that the most important criteria relate to the capability of entry and the proxy for that is usually the size of the banks that are operating outside that are able to—able to enter, and we then examine the expansion history of that bank in terms of the number of offices it's opened, either via de novo branching, that is: opening a new office, or via acquisition, we measure those and determine, these then yield a set of potential entrants which we could consider as potential—as entrants into the market, significant potential entrants.

Q Why haven't you included an investigation into the stated intentions of officers or directors of the bank?

A Well, in general, we found that there are problems in interpreting this kind of information. If, for example, a bank has determined one method of entry and has determined that that is the decided—made a decision to enter in that way, they probably wouldn't consider other methods of entry. Yet, if circumstances were such that that particular method were—were not available, then they might, having seen that their first or best decision was not available, they might then go investigating alternatives. Whereas if you may have asked them before the—their most—their best decision and their perception, their opinion before that was sort of made unavailable, you may have said: well, would you enter any other [180] way? No, we have made a decision that this is the best way.

So then if something happened to make that unavailable, they may well go on and investigate alternatives.

Similarly, circumstances may change, circumstances

the market area may change. The particular management may change. There are numerous reasons why these this information is difficult to interpret.

In general, economic analysis and economic research generally conducted in the following manner: a logical set of hypothesis relating to measurable variables are derived from various sources, either just the logic of economic theory or facts and experience that are available from wherever we derive these set of propositions that are measurable, and then attempt to verify them by various—by various tests. And this is just the general procedure that a trained economist is—trained economists perform in approaching this kind of subject.

THE COURT: Hold it one second. We will have a short recess to give the court reporter a rest.

(Recess taken.)

Q Before recess, Doctor Murphy, you testified that economic analysis typically does not consider stated intentions of bank officers or directors as to their future, possible future expansion. Can you point to specify instances in which banks have chosen alternative methods of entry after [181] their first choice proved unsuccessful?

A Yes, if we look at Exhibit P-93, we see examples here. P-92 is the answer to a set of questions regarding merger discussions on the part of defendant banks.

We see on the first page for Connecticut National Bank that they discussed the merger with Connecticut Bank and Trust Company in 1968. At that—these discussions led to an agreement. The agreement was filed—or an application was filed with the appropriate regulatory agency, and the regulatory agency approved the consolidation, at that point, under the provisions of the Bank Merger Act, the Justice Department sued, and at that point the parties dropped the suit—or the—the banks abandoned their consolidation plans.

After that, Connecticut Bank and Trust Company acquired a small industrial bank in the Bridgeport SMSA and has since established two de novo offices in the SMSA. So we have one example of that happening here.

We have several other examples. If we look at the first entry here, we see that Lincoln National Bank and Connecticut National Bank entered into—into negotiations or discussions, and that these discussions were not —did not result in any agreement.

After that method of entering the Stamford market was not—was not pursued, Connecticut National Bank acquired [182] the Atlantic National Bank in Stamford. In Litchfield County, in New Milford, Litchfield County National Bank was—discussions took place regarding consolidation. These discussions did not result in agreement.

When that—when that occurred—after that occurered, defendant banks entered New Milford with de novo offices, established de novo offices in New Milford.

So we see in these instances where one method was—was considered and did not prove to be available, that we have instances right here amongst—in Connecticut of banks investigating alternative procedures of entering a particular market.

We see that for defendant bank, for the First New Haven National Bank, we see that that they had a—discussions did not reach fruition, with Wallingford Bank and Trust, and subsequently entered the Wallingford area with a de novo office.

Similarly, New Haven National Bank had discussions with Guilford Trust Company, which did not result in agreement, and entered by an alternative route by de novo branches.

So we can see that just with the—with the defendant banks that when one alternative means was eliminated for one reason or another, either by—as a decision not to pursue the issue in court or as a decision—or as a result of having [183] discussions not coming to agreement, that defendant banks and other banks in the state have pursued alternative means of entry.

That's some indication that we might not want to give the stated intentions at the time much weight.

Q Now, employing the objective criteria for selection of potential entrants which you described earlier,

can you select potential entrants into the various markets in Connecticut?

A Well, if we look at Exhibits P-63 through—you know—I'm sorry. It's not P-63. It's P-70. If we examine Exhibits P-70 through P-74, it will give us some basis for selecting potential entrants. We look at Exhibit P-70, we see a list of all banks in the State of Connecticut ranked by deposit size with deposits in the column for total deposits, and column for number of offices, a column for the number of mergers in which the banks have been involved, a column for de novo branches opened, in both cases from the period 1955 to 1971, and the share of total state deposits of each—of each bank in the state.

If we examine this remembering that our criteria were size of bank and expansion history, we can look, for example, at the number of mergers column and we see that there's a break—there seems to be a break after the tenth bank, that the tenth largest bank entered into five mergers, below that the largest is two and the vast majority in both pages are zeros.

If we look at de novo branching, we see that the [184] second—that the tenth largest bank opened eight de novo branches during that period, and that seems to the a reasonable place to break in terms of the—the expansion history as far as branching.

Then if we look at the total deposit, then we see a difference between the tenth and the eleventh bank of some $82 million. So it would see that the largest ten banks in the state represent the most significant potential entrants into various markets in the state based on the criteria that we established.

Q Would you refer specifically to Connecticut National Bank?

A Yes, Connecticut National Bank is—as of the end of 1971, had deposits of $374.7 million. You can see that their expansion history in opening de novo branches, that they're the most aggressive bank in the state in terms of opening de novo branches during that period, establishing more offices than any other bank, including the two larger Hartford banks, and if you look at their

number of offices, Connecticut National operates more offices in proportion to its size than any other bank, so Connecticut National Bank is one of the—appears to be on the basis of these criterion one of the most aggressive banks in the state.

Q Would you refer generally to P-71, 72 and 73?

A Yes. P-71, we see that, using the most recent data, [185] as of the end of June—June 30th, 1972—we see that there's been some change in the ranks of banks, some minor changes here, that Connecticut National Bank has gone from fourth—from fifth in the state in terms of size to fourth in the state, and that First New Haven National Bank has gone from seventh to eight. So there's been some minor shifting.

In both cases the—well, in the case of First New Haven, there's still—there's only—less than a $7 million difference between it and the seventh, so in the case of Connecticut National it is about $17 million larger than the next closest rival.

So there's been some—some minor change in the rankings of the banks in the state. It doesn't alter our conclusions regarding potential entrants.

If we look at P-72, P-73, P-72 is documentation for the column regarding mergers. It shows each bank involved in mergers and it shows the—both the acquiring and acquired bank and their deposit size.

P-73 is documentation for the column on de novo branching, and P-74 shows us what de novo branches have been approved or opened by the ten largest banks from the beginning of this year until the end of August. These are back-up tables to the Exhibit P-70.

Q I refer you to P-75, Doctor Murphy, and on Page 4 [186] of that exhibit, really—actually numbered Page 2—at the bottom it is indicated that Connecticut National Bank applied for a branch in West Haven in 1967, but that that branch was—branch application was denied. What is the significance of that in your analysis?

A Well, it indicates that based on our general criteria that Connecticut National Bank as a potential entrant into the New Haven market and that they have demonstrated their—in addition to just a general objective cri-

teria, we have—they're interested sufficiently to apply for a branch office in this—in the metropolitan area, so that in addition to our general criteria have—showing a definite interest in entering.

Q Well, of course, the application was denied and so they did not enter. Doesn't that end the matter as far as Connecticut National is concerned?

A Not necessarily. If we turn back one page, we see that for the offices that they have established or applied for, that in Brookfield they applied for an office and were denied. Subsequently reapplied and were granted permission.

In Stratford they were denied, and then subsequently reapplied and were given permission. Same thing for their Black Rock office in—in Bridgeport, their Ridgefield office and their Prospect office. In each case they were denied and then went on to reapply and were granted permission.

[187] So that doesn't necessarily end the matter there.

Q Are there other—other routes of entry into a market?

A Yes. It is conceivable that an alternative to de novo branching would be the establishment or what's known as a foothold acquisition or a toehold acquisition where they could acquire one of the smaller banks entering the market and provide the same beneficial effect of potential competition.

Q I refer you to the fourth page from the end in that exhibit, Part D, what significance does that have regarding the First New Haven's class as a—classification as a potential entrant?

A Well, First New Haven, in general, we can see from Exhibit P-70, has been less aggressive in terms of expanding into new areas than the Connecticut National Bank. However, it indicates here that they were considering a number of offices on—with the exception of Middlefield, all of these offices were on the east shore of Connecticut. It indicates that they were considering going outside their—entering areas outside their current places of business and would have applied for these were it not for the consolidation between Connecticut National and—proposed consolidation between defendant banks.

Q Now, referring back to Exhibits P-65 through 68, what effect on potential competition is there in the New Haven [188] and Bridgeport SMSAs?

A Yes. Well, we have—we have some—we have once again—65 through 68 is a listing of the banks operating in the two SMSAs and their relative market shares.

Let us look at the outset at Exhibit P-68 which shows the existing level of concentration and the banks operating in the New Haven SMSA. We see—we run into a problem here in the case of Connecticut National Bank. You can see that they have one office in the SMSA, this is in the Town of Orange, which is part of the New Haven SMSA. However, it is part of that area which we have stated earlier it is difficult to actually discern where the dividing line takes place in terms of defining markets.

This is a very small share of the—of the total deposits, 1.1% of total deposits. It is in this area which we considered as being difficult to—to ascribe to to any market area. So for purposes of this analysis, we're considering Connecticut National Bank as a potential entrant into this market.

Q Given that conclusion, what is the effect upon potential competition?

A Well, if we think in terms of the largest banks, of the ten largest banks as being potential entrants, and we see who is presently represented and who isn't, we see that there are five [189] banks presently not operating in this SMSA, the Colonial, City National, State National and First Connecticut Bank Corporation, in addition to defendant Connecticut National Bank. Connecticut National Bank is the largest of all these, it is closest, it's shown an interest both in terms of its applications and by establishing itself on the periphery, and it's demonstrated in the past an aggressive—aggressive expansion activity.

So we considered this merger would eliminate the most significant potential entrant into this highly concentrated market.

Q Now, would you turn to the Bridgeport SMSA, please?

A Yes, in the Bridgeport SMSA we faced a similar situation with respect to the defendant banks in terms of

their—whether they're in the SMSA or not, whether they're in the market area or not. If we view—if we look at the map again, we see that in Milford the First New Haven National Bank operates—excuse me—three offices. Once again, this Milford area is part of that four-town area where we have indicated there is difficulty in locating the—locating the dividing line.

So once again for purposes of this analysis, we're considering First New Haven National Bank as a potential entrant, and it—the effect of the consolidation then would be to eliminate one of three potential entrants.

This table does not indicate that the Hartford National [190] Bank and Union Trust Company have opened offices, de novo offices in the SMSA since this—since this table was prepared. So there are—as I say, there are three potential entrants and the consolidation would eliminate one of the three.

Q You are aware, aren't you, that the cities of Bridgeport and New Haven are closed to de novo branching by outside banks, according to Connecticut law?

A Yes, I am aware of that. However, if we remember our discussion regarding the location of branches, I believe it is Exhibit P-76, and the trends in population within the SMSAs, we recall that the population growth has taken place more outside the central cities than inside. So in some sense these—these areas are at least as attractive and in some cases more attractive in terms of a place to enter into the market area.

We see that the banks in the market have found it more attractive, they have put more branches there proportionately than they have put in the downtown areas.

Q Is there an alternative way of entering the downtown areas of Bridgeport and New Haven?

A Yes. There are two ways. One would be to—for a foothold merger, in which the smaller bank operating in the area would be acquired, and another would be to establish a—through a holding company device to establish a de novo bank in the area.

[191] Q Would you elaborate on that last procedure?

A Yes. Under the Bank Holding Company Act of 1970, a—which—a corporation which owns 25% of a bank

is classified as a bank holding company. There are additional—if the—if the corporation owns between 5 and 25% and the—and it can be demonstrated that that corporation has control over the bank, that institution is known then—is classified by the Federal Reserve Board as a bank holding company.

Bank holding companies can and do operate and open de novo banks, or new banks, when branching laws are such that they can't open de novo branches.

Q And does P-79 reflect that?

A Yes, P-79 is an exhibit which lists states in which this phenomenon occurs. It specifies the de novo branching law in the state, and the column shows how many holdings companies are actively doing this kind of thing in these states, and then shows the number of de novo banks; if we look, we can see that this activity is most prevalent in the State of Florida which has a unit banking law where holding companies—Florida is also a very rapidly growing state and holding companies are active in the state, and since they are constrained by law from de novo branching at all, not permitted to open de novo branches, they have been active and have established in the period of several years, three and a half years, have [192] established 33 de novo banks.

We see the same thing in Virginia and some of these other states, to a lesser degree. So this is one means of overcoming a restrictive branching law in a state.

Q Now, is entry into these two SMSAs by foothold possible?

A Yes, in Bridgeport, for example, there are several banks, there's the Lafayette Bank and Trust Company which has, according to our Exhibit P-75—has less than 6% of total deposits, and James Staples and Company with less than 1%, and there are several in New Haven —several small banks in the SMSA that could be acquired.

Q Now will you turn to the other SMSAs, Doctor Murphy, and summarize the effect on potential competition in those SMSAs?

A Well, there is a summary, and we haven't gone into as an involved procedure in trying to determine the

definition and boundaries of the market area, but there are nine other SMSAs in the State of Connecticut, and in four of these SMSAs, Connecticut National Bank is currently operating. The five other ones, neither of defendant banks operated. For example, in the Danbury SMSA there are only four potential entrants left, and the consolidation would eliminate the second of four. In the Stamford SMSA there are five potential entrants, and the merger will eliminate the third largest of the five. In Norwalk SMSA there are six potential entrants with —consolidation would eliminate [193] the fourth largest. And Waterbury we have six potential entrants with defendant being fourth largest. So in those SMSAs in which Connecticut National Bank already operates the second —or the First New Haven National Bank would be eliminated as a potential competitor.

There are several SMSA in which neither bank presently operates. For example, in Meriden, we have two po'— I'm sorry, we have eight potential entrants, defendants being third and sixth largest; in Hartford we have seven potential entrants with defendants being second and sixth largest; in New Britain there are nine potential entrants, defendants being fourth and eighth largest; New London, seven, defendants being second and sixth largest; Bristol, nine potential entrants with defendants being third and seventh largest.

So throughout the state the consolidation would eliminate potential entrants into these markets. This is harmful to varying degrees from SMSA to SMSA, but it would eliminate one potential entrant in each case.

Q Doctor Murphy, I refer you now to P-77 and 78, what do they indicate regarding the general trend in banking in the state as a whole?

A Well, if we look at Exhibits P-77 and P-78, P-77 is an exhibit which refers to the branching patterns of the ten largest banks at the end of 1954. At that time only three banks— [194] three of ten operated branches outside their headquarters SMSA. Connecticut National Bank operated only one, and the two Hartford banks, Hartford National operated six, Connecticut Bank and Trust operated eight branches outside their headquarters SMSA.

So in 1954 there was very little activity in the way of these large banks having expanded into other parts of the state.

However, if we look at Exhibit P-78, we see a dramatic increase in the activities of these ten large banks outside their headquarters SMSAs. Hartford—Hartford National having 37, Connecticut Bank and Trust with 36, Union Trust of New Haven with 39 branches, so on down the line where we just—of the top ten the only one that has not been active is Second National Bank of New Haven. Every other SMSA—or every other banking organization of the top ten has been active in establishing itself and representing itself in areas outside its headquarters SMSA.

Q Now I refer to P-89 and 90, also relating to the state as a whole. What do they show regarding the trend of commercial banking in the state?

A Excuse me? Which—

Q 89 and 90.

A Yes. P-89 refers to—or is an exhibit which shows [195] the number of branch offices in operation by year from 1955 to 1971. We see the same pattern, 1955 there are only 88 branches, at the end of 1971 there were 469, a greater than fourfold entries in the number of branch operations and offices in the state.

Number 90—P-90 shows us how some of these—this expansion on branching took place, that some of it took place in the part—in the way of acquisitions and mergers, which eliminated some of the banks, you can see at the beginning of 1955 there were 105 banks on operation in the State of Connecticut. At the end of 1971 there were 63 banks in operation in the state. So this is in general agreement with the overall trend of banking—large banking organizations going outside of their SMSAs, penetrating other markets, doing so by both acquisition or by holding—or by de novo branch expansion.

Q Does P-92—sorry, 91 and 92—do these exhibits versify the trend that you describe?

A Yes. We can see that the share of total deposits held by the five and ten largest banks, this—these shares are described in this table for various time periods. You can see at the beginning of the period that within the

state the five largest banks had 46.4 of total—percent of total deposits, and that as of 1971 they had 61% of total deposits, with the ten largest, the percentages are 57.8% and in 1954, an [196] 83.5% in 1971.

This consistent—the larger banks have grown, they have been active, they have acquired other banks, they have established de novo branches and in general have resulted in these—these banks growing faster than the other banks in the state by these methods have increased their share of total deposits.

Q P-92 relates to concentration by number of accounts?

A Yes. We see that for the nine largest—excuse me—nine largest banks, which is all we could get from the published data sources, but that for nine largest banks various measures of the market share for size of account are represented.

We see for number of accounts, that for smaller accounts, the larger banks held 72.1%, and the trend goes up as size of account grows, and we find that for large accounts the larger banks hold almost 84% of total deposits, which is what we would expect.

Q What relevance have mergers played in this increase in concentration?

A Well, if we were—examine the previous exhibit on—showing the trends in the state—

Q Is that P-70, Doctor Murphy?

A Yes, it is—yes. Well, if we examine P-70, we see that the third column over—we can look at the number of [197] mergers, and we can see that the merger activity is almost completely denominated—dominated—I'm sorry—dominated by the largest ten banks. That after the tenth largest bank which entered into five acquisitions, the largest number is two, the New Britain Bank and Trust, we see several others that had one acquisition, and the rest of the banks in the state had none.

If you will turn the page over, we see a full column of zeros. So mergers have played an important part in this expansion.

Q What effect would you expect this consolidation to have on this merger trend?

A Well, there's—first, as far as the—just the arithmetic goes, it would increase the share held by the largest top ten banks. In addition, we have the possibility that having—if this merger is successful, it may be a signal to other large banks in the state that such mergers would be permitted and further accelerate this trend towards concentration of the state.

Q Does P-93 relate to that?

A Yes. P-93 relates to merger discussions, once again. We discussed this earlier, and we see that for New Haven Bank, for example—if we look at Page 7, number 16, we can see that in the years 1968 and 1969 New Haven National Bank [198] undertook discussions with two—two banks listed here amongst the top ten, Colonial Bank and Trust and State National Bank of Stamford, and if we turn to Page 8 of this exhibit, we can see that City Trust Company, now City National Bank in Bridgeport, one of the top ten banks, also, conducted merger discussions with New Haven National Bank. So it is reasonable to assume that these sorts of discussion—decisions would be enhanced if this merger were—were permitted. Might trigger other mergers in the state.

[199] Q What would be the result of a series of mergers of that kind?

A Well, the result would be a serious diminution in the number of potential competitors in these various markets throughout the state. That is, the banks—there wouldn't be that many large aggressive, capable banks with expansion histories and, as I say, capabilities to enter in and de-concentrate some of these various markets throughout the state.

MR. CLARK: Thank you, Dr. Murphy. I have no further questions.

BY THE COURT:

Q Dr. Murphy, before you are turned over for cross-examination, I would like to ask a question that's been on my mind. And before I do it, I would like to qualify it by two statements: One, that I am not sure my question is relevant or your answer may be relevant. I just have to research the law later on, but in the event it is, I should have at least your opinion somewhere in the rec-

ord. Two, I am not quite sure I can articulate the question.

A I am not sure I can articulate the answer.

Q To reflect what I have in mind: But you have gone over several aspects of the effects of mergers of banks.

A Yes, sir.

Q And as I sat here, so much of it seemed to be im- [200] personal, mathematical formulae, trends, almost computer-like type of answers, which is fine, but in banking isn't there a lot more to banking than cold hard figures on paper; for example, is this—any relevant factor with respect to mergers that when banks are small the local businessman gains a reputation with the bank? You mentioned, for example, line of credit.

A All right.

Q And then you said line of credit depends sometime on the amount the customer keeps on deposit, but with small banks and local banks the president of the bank has great discretion when it comes to lines of credit, whether a loan should be given at seven per cent or six and a half, with respect to the customer's reputation in the community, history paying his loans at the bank, whether he pulled himself up by his own bootstraps, whether he is just well known as a man of integrity. Is any of that lost when banks merge? Is that a relevant factor?

A Well, to the extent—the factors that you cited regarding integrity, reputation, knowledge of the customer, is something that I think any commercial loan officer would look into. Now, in the case of people that have known each other for many years, maybe there wouldn't be so much in the way of formal investigation, but these kinds of—I would hope that from the point of view as a former FDIC employee worrying about [201] loss of loan failures, that any commercial lending officer would take these factors into consideration, whether it—it's not—I agree that the—the analysis and discussion here has been using—citing figures—I don't know—I don't want to rank myself with a computer in terms of spewing out numbers, but this is the way that economic analysis typically proceed. It tends to measure tendencies in any

kind of economic analysis, any kind of relationships that we might possibly cite and try to test; we also have some room for influences that can't be measured. I think this is the kind of thing that can't be measured in general—it would be quite difficult to the extent that smaller banks are—have this informality and know their customers better. They're capable of competing and can do an effective job. I don't think we are saying here that small banks are not capable of competing. My opinion, having conducted numerous studies on the existence and extent of economies of scale of banks, that well managed small banks are very definitely competitors for the kind of business that we are talking about.

Q All right. Okay. So that's on the one hand where I possibly cite the question to you whether the merging —the resulting bank does have an effect on the customer who now is a long distance away and no longer is intimate with the officers. Now, let me turn the coin around. Isn't it a fact—and I possibly cite this, whether it's relevant or not, I don't know— [202] but isn't it a fact that sometimes mergers actually help the local customer?

A Yes.

Q But they're now able to coordinate their operational facilities, there—you know, they have a lot more money, so maybe they can lend at something less if the occasion arises and are more apt to, quote, take a chance on a loan because they're that big.

A Yes, the risk factor is less.

Q Yes.

A This is central to our whole notion when we talked about central competition. We are generally talking about—we are not trying to say that large banks are somehow bad. In most—in many cases when they enter into a market that's how they concentrated. They have exactly this effect, that is, they can come in, and sometimes whether they come in de novo, or especially if they replace one of the smaller competitors in the market, they do introduce new services and they do introduce as a means of gaining a foothold, in many cases improved services, better—better prices, and it is true that one of the benefits of a branching system in general is that

we have diversified risks, and that is events—let's say the total banking organization is not tied to events in one particular town. If there is a town with an office and there is only [203] one small bank there, if a mill closes, it could very well spell the end of the existence of the bank. Whereas, with a large bank that is diversified, it can—it will have at the same time some areas growing and some areas declining, and on the average they can diversify out. And the same thing is true with risks. If they have loans in some areas, in other areas that have difficult economic conditions, that these risks can be spread and they can, as you say, they can take more risks, take more chances. Generally, we find figures, in studies that have been conducted, we find that branch banks tend to have higher loan deposit ratios, that is, they need carry less in the way of highly liquid assets because of this diversification effect. So there is—yes, our whole notion of potential competition is that these large banks can, in many cases, improve services.

Q And on the other side of the coin, too, as part of the factors that have to be weighed, your last minutes of testimony seemed to be directed toward a possible inference that there is an octopus-type of merging with tentacles. Now, with these big mergers going on in the state of Connecticut, that may, in effect, show a trend that ought to be stopped. Am I right? Did I misinterpret that?

A Let me see if I can clarify that, sir.

Q I mean, for example, you said at one point we have [204] a hundred and five banks. Now we have sixty-three and look what's happening. These mergers have taken place. I assume you were telling me all that so that I would draw the inferences somehow that this merging trend should be stopped, at least in this instance, of those two banks.

A Not—let me qualify that and make this—try to clarify the point. What we are saying isn't that there is some kind of octopus or something that is coming around that is going to gobble everybody up. What we are saying is that this expansion can be highly beneficial and effecting markets that are currently concentrated and that to the extent that large banks are capable of providing

this beneficial effect are eliminated, that in the future there is less possibility of these—these larger banks making these—entering and making these—or causing these desirable effects. So we are not saying that bigness is bad. We are not saying that there is some kind of octopus, or several in Hartford, that are going to gobble up the whole state or something like that. What we are saying is that the way in which they expand has an effect on local markets. And in this particular case we are saying that that method of expansion in this case is harmful. It's a method of expansion, not the expansion itself. That is the basis of our—of my testimony.

Q Because if it were so that there were one or two banks [205] who have gotten the jump on other banks through mergers, that the Government has not interfered with, just let them develop, on the other side of the coin, it may be that banks now have to merge to protect themselves against banks that the Government has permitted to merge and just in self defense, what two can do against one is a lot better than what each of them separately can do against one.

A I don't know if I would accept that. I think that the kinds of banks that we are talking about, especially in this case, have demonstrated, especially in this case of Connecticut National Bank, highly capable aggressive banks. I don't think—I wouldn't want to say they should be afraid of anybody, based on their record. So, I don't—but as a point of fact the Bank Merger Act prior to 1960 there was some doubt. I may be entering in your area now—there was some doubt as to whether the anti-trust laws applied to banking. At that time the Bank Merger Act was passed and that was the first time that these acquisitions were subject to federal scrutiny. And then there was some discussion—there was some which has been settled in the courts as to whether the Bank Merger Act or the anti-trust acts, or both, apply to bank acquisitions and mergers.

Q Very well.

A So, if the fact that some acquired—we can't really do anything about what happened before 1960 in terms of public [206] policy.

Q And my last question. At least I would like to get this point. You have explained how these holding companies work to be able to open up in various places here in Connecticut and Florida and other places. Did you say what they do is gain control of twenty-five per cent or more—

A That's what the statute—

Q —of local banks?

A Of any bank. A corporation which holds twenty-five per cent or more of the stock, or if it holds five per cent and it can be shown by some means that they control, the bank is defined as a bank holding company and comes under the regulation of the Federal Reserve Board.

Q And what follows from that? That they can open branches?

A Well, they can, of course. This would have to be coordinated with one of the—either the state or national federal regulator in permitting a new charter.

Q There has to be a new charter and all?

A Right. Right. That is correct.

Q Very well. Thank you very much, Doctor. We will start cross-examination at 2:20 p.m. this afternoon.

(Whereupon, the luncheon recess was taken at 1:10 p.m.)

[207] Afternoon Session

(2:30 p.m.)

THE COURT: Are the parties ready to proceed?

MR. CLARK: Yes, your Honor. Your Honor, since cross-examination has not begun I request permission to ask one or two more questions.

THE COURT: Yes.

BY MR. CLARK:

Q Dr. Murphy, you testified this morning regarding the beneficial effects on market structure in the event of actual entry by a potential competitor relating to improved performance and so forth, is there another beneficial effect which is related to potential competition?

A Yes. In general, we think in terms of a—if a concentrated market exists with a strong potential com-

petitor capable of entering, that in these cases the participants in the concentrated market may find it to their advantage not to exercise their market power. That is, the threat of an entrant in the so-called—in the wings, the wings effect, could conceivable effect their behavior in such a way that they may have—to outcome would be more like a less concentrated market.

Q You are saying that the mere existence of this potential competitor has some effect?

A Yes, it could have some effect. Right.

[208] MR. CLARK: I have no further questions.

CROSS-EXAMINATION

BY MR. REYCRAFT:

Q Dr. Murphy, do you have an opinion as to whether savings banks should be included in the line of commerce applicable to mergers among financial institutions?

A I think it depends on the merger in question.

Q Do you have an opinion as to whether savings banks should be included in the line of commerce which the court applies in this case?

A In my opinion—my opinion—my general opinion is that it should not.

Q And can you tell me why not?

A I think there's sufficient difference amongst the institutions and their capabilities that leaves for a broad class of customers that the—the commercial bankers, the appropriate institution can enter.

Q Now, you did write an article, did you not, which was published in the Journal of Bank Research in 1972, in the summer, entitled Competition Between Thrift Institutions and Commercial Banks?

A I co-authored that paper. Right.

Q With Gary Gilbert of the Federal Deposit Insurance Corporation?

[209] A That's right. I didn't write it, I co-authored it.

Q Pardon me?

A You said did I write it. I co-authored it.

Q You were co-author. Fine. Did you review the con-

clusion of the Supreme Court in the Philadelphia National Bank case that commercial banking alone should be treated as the appropriate line of commerce?

A Yes. We—the article attempted to assess the various statistical studies and what their meanings were for the definition of a line of commerce, yes.

Q And what did this assessment show?

A Well, there were several that didn't—it raised certain questions, it didn't show anything.

Q You didn't reach any conclusions?

A No.

Q Well—

A We say certain things may be in order, but there was no conclusion reached.

Q Well, you did say, did you not, that "increased competition among commercial banks and thrift institutions for savings type liabilities in the 1960s suggests that some reconsideration of the commercial bank product line specification may be in order, and this is especially important if mutual savings banks are successful in obtaining the demand deposit [210] privilege in several of the states in which they are permitted to operate, and S and L's make use of the capability to make third-party transfers."

A Yes.

Q You did say that. And you agree with that, don't you?

A Well, that's one of the three possible interpretations of the results.

Q What are the other possible interpretations?

A The other possible interpretations are that the Supreme Court was wrong in the first place; never was right in the single line of commerce.

Q What is your opinion of that assessment?

A That's—just—well, my opinion. That the Supreme Court—I think the Supreme Court was correct in that case, in the Philadelphia case. See, what we said, if you will view the rest of the article, was that we found evidence of substitution between these liabilities of—of institutions was much greater in 1960 than it was in the 1950s, so the Supreme Court making a decision in 1963 in a case that I believe was in the district courts in 19—I don't know when it was—19—

Q Sixty-one?

A Sixtyone, right—that as of 1961, based on the evidence, that was the appropriate line of commerce in that particular case. And in general.

[211] Q But that since that time the evidence indicates that there's changes in the amount of competition between savings banks and commercial banks, is that correct?

A Thrift institutions, yes, sir.

Q Thrift institutions in general?

A In general, we included savings and loan associations in our—well, the authors of the study whose—the papers, one which reviews a group of studies conducted, and says: Well, what do these studies mean in terms of product line specification, yes.

Q And you found increasing competition between savings type institutions and commercial banks?

A Well, that was—we found that the other—we interpreted the results of other peoples' studies to mean that, yes.

Q Well, as an economist, as an expert, which, of course, we concede that you are, you do base many of the conclusions that you reach on the research that others have done—

A Yes, sir.

Q —do you not?

A Yes, sir.

Q So you are satisfied that your analysis of the research that others have done has led you to a proper conclusion, are you not?

[212] A Yes, sir.

Q All right. Are you famailiar at all with any activity on the part of the savings banks in the State of Connecticut to obtain checking account powers?

A Yes, sir.

Q What is your knowledge on that subject?

A I know that they sought this in one of the recent legislative sessions and that the vote was close. They put in a sustained effort to obtain this privilege.

Q Have you made any investigation or do you have any knowledge as to whether these efforts are continuing?

A I haven't made—I assume they are. I have no—

Q No specific knowledge?

A No specific knowledge, no, sir.

Q Right. If savings banks are successful in getting these powers will this make them in your opinion even more competitive with commercial banks?

A Yes, sir.

Q You have testified, I believe, that savings banks in the State of Connecticut now make personal loans?

A Yes, sir.

Q Is that right?

A Up to 8% of their assets.

Q Pardon me?

[213] A Up to 8% of their assets.

Q What are the total assets of the savings banks headquartered in Connecticut, do you know?

A I don't recall, no, sir. I looked it up this morning, but I don't recall.

Q Pardon me? You looked it up this morning?

A Yes. I say—I checked as of 1970, but I don't recall the figures.

Q Is it pretty close to the total assets of the commercial banks? In the five to six million dollar area?

A I really don't recall. I think the assets are substantial. I suspect that they probably are in that area. In that general area.

Q I don't want to guess either. I'm sure we'll have the number in the record either through the Government records or ours. But 8% of those total assets are available for personal loans now, is that right?

A Yes, sir.

Q Do you know how long savings banks in the State of Connecticut have had those powers?

A No, I don't sir. No.

Q Do you know whether it's a fairly recent development?

A No.

Q For persons who are seeking personal loans do you think [214] that savings banks are a reasonable substitute for commercial banks?

A Yes, I would think so. Up to a certain size. I believe there's a size limitation of $5 thousand on that, so up until that point—

Q I believe that the Government's exhibit shows that that includes a rather large number of individual loans—

A Yes, sir.

Q —right?

A Yes, sir.

Q And it probably includes the majority. Although the exhibits will speak for themselves.

MR. CLARK: There's no exhibit on personal loans on behalf of the Government.

MR. REYCRAFT: All right.

A If we consider most of them to be automobile loans, I suspect that they would be below $5 thousand.

Q And is there competition also for personal loans from other financial institutions in the state other than savings banks?

A Yes. I suspect, although I haven't looked at the facts in any great detail, I assume that there are credit unions and I assume personal finance companies operate—

Q And these are substitutes for persons seeking personal [215] loans, is that right?

A To some extent. The credit union has a bonded association test which is applied more restrictively in some states than others, one has to be an employee or a member of a fraternal organization or some such bond of association; to the extent that an individual has such membership, it would be.

Q Have you done any study or have you—has it come to your attention the approximate percentage of the deposits of the Connecticut National Bank which are savings type deposits?

A Yes. It's in the Report of Condition I cited in Exhibit P-30.

Q And can you tell me what that number is?

A I believe the portion—portion of IPC time deposits, time and savings deposits. The proportion of IPC, time and savings deposits as a—of IPC time plus IPC demand deposits for Connecticut National Bank as of Call Report date in the exhibit is 51.8%.

Q And what—what in dollars? Does the exhibit show the number of dollars?

A Yes, I have that. As of December, 1971, 101,856,000.

Q Are you familiar, either from recollection or by looking at the exhibits, with the identity of the other financial institutions which are headquartered in Bridgeport?

A No, sir, not—no, I don't remember the details. No, sir.

[216] Q I'm not asking you—I'm not trying to test your memory, but at least the commercial banks are shown on one or more of the Government exhibits?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Are you familiar with the fact that there are savings banks which are headquartered in Bridgeport?

A Yes, sir.

Q Are you familiar with the People's Savings Bank?

A Yes, sir. That's the savings bank with which the Connecticut National has the nine interlocking directors.

Q Do you know the size of that bank?

A I believe it's $700 million dollars. I'm not sure.

Q And do you know what percentage of those assets are savings deposits?

A Of those—of the Savings Bank?

Q Yes. Of the People's Savings Bank.

A Oh, I would suspect that deposits are all savings—they would all be savings accounts or certificates. Savings certificates.

Q Virtually all of the 700 million would either be held in savings accounts or certificates of deposits?

A Yes, I would think so.

[217] Q Do you know what interest rates is paid by People's Savings Bank on savings deposits?

A I would—the regulation for passbook would be 5%. I assume they pay that, I'm not sure.

Q The regulation you're referring to is Regulation Q?

A No, it's Regulation 329 of the Federal Deposit Insurance Corporation.

Q And that limits savings banks to paying 5%, right?

A Yes, sir. It's—the interest rate regulations are—for the Federal Reserve Banks is known as Regulation Q. They—savings banks, Federal control of savings banks lies in the Federal Deposit Insurance Corporation. They're

—the similar regulation's called Regulation 329. Generally, it's referred to as Regulation Q. Yes, that's the type of control. Yes, sir.

Q And what is Regulation Q?

A Regulation Q, or this type of interest rate ceiling, is a ceiling which the federal government in 1966 extended commercial bank interest ceilings which had existed for—I guess since 1933—extended those to thrift institutions, mutual savings banks and savings and loan associations.

Q Do you know why the federal government extended Regulation Q to savings type institutions?

A Well, I know what the said. This is a fairly complex subject. Almost the entire Hunt Commission Report deals with [218] this, and generally these institutions have an imbalance for the folio—imbalance for the folio, imbalance between their savings—between their liability structure and their asset structure, such that they're not viable in periods of—there's a tendency for them not to be viable in periods of rapid interest rate escalation or alterations in what's known as the yield curve. In these situations it's very difficult for those institutions to compete.

Q Savings type institutions?

A Yes, sir. With the restricted asset powers.

Q To compete in terms of attracting deposits or attracting loans?

A Funds in general. Right.

Q Because of competition from other sources for those funds?

A Yes, sir.

Q And what sources of competition exist for those funds?

A Well, there's the commercial bank and there's the open market in general.

Q Now, Regulation Q imposes an interest rate ceiling on what commercial banks can pay for savings deposits, does it not?

A Yes, sir.

Q And what is that ceiling?

[219] A I believe it's 4½% at the present time.

Q So that the savings bank—

A There's a 50 basis point differential.

Q A half of a per cent?

A A half a per cent, right.

Q Now, for longer term money, CD's—certificates of deposit are savings banks permitted to pay a higher interest rate?

A I believe on anything but the passbook. I have to look—the regulations are complicated, but I think beyond that, they're the same. I'd have to check that, though.

Q Beyond that?

A Beyond the passbook account. I'm not sure about that.

Q Well, I'm not just sure I understand what you are saying.

A The passbook account, if you remove the passbook account to the certificate accounts, there are still interest rate regulations. As to whether there—there's a variation between institutions, I'm not too sure on that.

Q If you'll just let me ask you a question for a minute. Isn't it a fact that savings banks are permitted to pay a higher interest rate on certificates of deposit than on a savings—than on a passbook?

A Yes, sir.

[220] Q That's my point.

A This is across the board, yes, sir.

Q And what is that higher rate for, CD's?

A Well, there's—there are steps, depending upon the maturity and size. For certificates over a hundred thousand there is no ceiling, for steps—depending upon the maturity and the size there are variations as to what the ceiling rate is.

Q Is the ceiling six per cent?

A I am not sure. I think for some certain size and certain maturity classifications. That may be, as I recall the regulation. I think that may be a two-year certificate but I am not sure on that.

Q I have seen advertisements stating that savings banks can pay 6.2% on a continuous compounding basis.

A Yes.

Q Are you familiar with that concept?

A Yes, sir.

Q And could you explain it?

A Well, that means—compounding means that interest is added—whenever the interest is added the next period's interest is based on the original principal plus the interest which has accrued. So if this is done daily the effective rate can be increased, yes.

Q So that they, in effect, get up to 6.27% effective rate [221] over the two year period of the CD, is that about right?

A If you—if they advertise it, I assume they don't violate the law in doing so. I assume it's—it's acceptable.

Q Right. Do you know what the regulations are which apply to the maximum rates which a commercial bank can pay on a certificate of deposit, including this continuous compounding method, if commercial banks do that?

A No, I am not sure. I am not sure I understand your question.

Q All right. Is it—do commercial banks pay less than savings banks on CD's for the same periods?

A I don't think the regulations state anything about the differentials in the method of computing interest.

Q So you believe, then, that savings banks and commercial banks are on an equal footing with respect to interest payments on CD's, is that right?

A Yes, I think so. Right.

Q I don't know the answer. I am asking you, so I don't want you to think that I am—

[222] A I think that's the case. Now, I know that the —the purpose of the legislation was to protect thrift institutions by putting this differential in. As I indicated earlier, the commercial bank has a more diversified portfolio which turns over faster, and in period of rising interest rates it can adapt, whereas the thrift institutions cannot if it's assets only turn over in eight or nine years, say ten years, only one-tenth, they can only replace one-tenth of their portfolio with new, higher yielding assets.

Q Are you talking about mortgages now primarily?

A Primarily mortgages. There are other long term investments.

Q All right. It is a fact, is it not, that saving banks invest a large part of the deposits that are left with them in mortgages?

A Yes, sir.

Q Do you know what percentage in the aggregate of savings bank assets are invested in mortgages?

A I would say something on the order of—it varies from state to state, but I would think it would—it varies. There are 18 states which permit savings banks to operate, and I recall it varies from something like 60 to 85 to 90 percent of their—

Q From 60 percent of the total assets to 80 or 90?

[223] A I don't recall whether the figure was total deposits, but it varies substantially. I would say something between 70 and 90 per cent in general—is my recollection of the figures.

Q Do you know whether savings banks in the states other than Connecticut are permitted to make personal loans?

A Yes, sir.

Q In what states?

A I'm not sure which states. In general, there's a variation from state to state as to what the powers are. There are 18 states. Which of the 18 permit them, I—I know New York doesn't and I know Massachusetts does, I know Maine does, but mainly because I have lived in those states at one time or another.

Q Maine does permit personal loans?

A Yes, sir.

Q Do you know whether state laws of any state permit savings banks to have checking accounts?

A Yes, sir.

Q Which states?

A New Jersey and Baltimore, to my knowledge.

Q You mean Maryland?

A Maryland. Right.

Q How about Massachusetts?

A Well, Massachusetts now has introduced something [224] called a Now Account, which is called a negotiable order of withdrawal. I don't know if it's called—classified as a checking account, but for all intents and purposes, I think it is.

Q The economic effect is the same, is it not?

A Yes, sir.

Q Do you know what the practice of savings banks is

with respect to permitting withdrawals from passbook accounts?

A Yes, sir. I—they permit withdrawals at—at the discretion of the customer.

Q In other words, if I had—if I had a passbook which had—showed a thousand dollars of savings in it, it is your understanding that I could present that passbook to the bank in which I had that deposit and take out a hundred dollars if I wanted, is that right?

A Yes, sir. There's a provision usually that the bank can require 30 days' knowledge—notice. But this is rarely ever invoked.

Q Are you—

A So for practical purposes, you are correct.

Q If the 30-day notice provision were invoked by a savings bank wouldn't that surprise a lot of people?

A I think it would probably cause—

Q A run on the bank?

A Yes, sir. Not a run. Serious difficulties of one kind or another.

[225] Q It's not socially acceptable conduct?

A No.

Q For savings banks, isn't that right?

A Yes, sir.

[226] Q All right. How do you distinguish that from a demand deposit at a commercial bank?

A By the third party transfer, that is: that the payments mechanisms opened to the demand deposit customer, that is: he can have those funds, he doesn't have to withdraw them to himself, he can have them transferred elsewhere.

Q Are you familiar with any savings banks which—which issue the equivalent of money orders for third party transfers?

A You mean you—issuing them in—in return for coming in, withdrawing funds?

Q Give you a hundred dollars or say take a hundred dollars out of my check—my savings account and give me a money order payable to the United Illuminating Company?

A I think that practice is—yes, yes, sir.

Q Do you know whether that practice is in effect in Connecticut?

A I'm not sure, but I assume it is.

Q Do you know whether it is in other states?

A Yeah, it is in other states.

Q So, then, the net economic effect for the depositor of having his money in a savings bank and having his money on demand in a commercial bank is large that he gets interest for the time it is in the savings bank whereas he doesn't in the commercial bank, isn't that right?

[227] A No, that's not—

Q What is correct?

A The—the capability to make the third party transfer through the mails and in having that convenience—that convenience power, as a demand deposit holder is—is worth a substantial amount to that, and we can see that—at least an implicity return on demand deposit accounts, it is equal to the cost of handling the outlays on the part of the bank in handling his—his account.

Q Are you saying it is returned to the depositor?

A Yes, that's a measure of the return to the depositor, it is an implicity return, it is a cost of servicing.

Q It means he doesn't get it, right?

A Well, it means he receives the benefit of the bank's expenditures, and his service charge is generally in—do not cover the full cost of servicing the account. So that—that is implicit return on demand deposits.

Q The commercial banks perform the service of keeping his money for him, right—

A Transferring it.

Q —for which they do not pay any explicit interest?

A Yes, sir.

Q The savings banks keep his money, also, and they pay him explicit interest, right?

[228] A Yes, sir, as do the commercial accounts for the similar account.

Q But not for demand deposits?

A Not for demand deposit account.

Q In either case, the depositor by going to the sav-

ings bank or the commercial bank can withdraw that money on demand, is that right?

A Yes, sir. But in the commercial bank he doesn't have to go to the bank, he can just send it, send his checks elsewhere, any part of the country.

Q He can sit at home or in his office and write a check and put it in the mail?

A Yes, sir.

Q And he can do the same thing with his deposits, can he not?

A Well, yes, he can deposit—there are deposit by mail arrangements.

Q He gets a pay check, he puts a deposit slip with it in the mail and deposits it, right?

A He can do that, yes, sir.

Q So that isn't it true that—that in the case of commercial banks the convenience factor's less important than it is for savings banks?

A Oh, I wouldn't necessarily say that.

[229] Q Well, I thought that was the net impact of what you just said?

A Well, the—he does have the use of the U.S. mail, but there's still other services he might wish to obtain from a commercial bank which he'd want to—which convenience would be important. To cash a check, let's say, or various—applying for a loan or a deposit of currency, can't send currency through the mail. If I want to make a deposit of currency, I have to do so at the bank.

Q Commercial or savings?

A Commercial or savings, right.

Q If you want to pay your bills by—by check, you can do that sitting at home or in your office, can't you?

A Yes, sir.

Q And you can't do that in a savings bank?

A No, sir.

Q So that's an advantage for the commercial bank?

A Yes, sir.

Q So you have offsetting—decision on the part of the holders, the—that convenience as opposed to the inconvenience of going and receiving explicit return?

A Decision at the market—

Q And is it a fact, also, that someone who receives a paycheck can deposit that check in the mail and send it to his bank, [230] isn't that right?

A That's true. Or he can have it sent directly from your employer in some cases.

Q Right, and he can do that with a savings bank, also, can't he?

A I would think so.

Q All right. So that there is a very substantial amount of direct competition between commercial banks and savings bank in this area, isn't it?

A Well, the savings account, yes, sir.

Q And for demand accounts?

A Well, no, you just can't—you can't sit down and write 15 or 20—capable of writing 15 or 20 checks to pay a monthly bill is something which would be much more cumbersome at a savings bank, to go and buy 15 money orders.

Q Well, there's competition in that area and it is a question of degree, isn't it?

A Yes, sir, everything as a credit of demand deposit being money, so everything competes with money in the portfolio of the individual.

Q Well, what else competes with a savings bank and a commercial bank for demand deposits of the kind we have described?

A Well, any good—anything I pay for I substitute. Every time I substitute goods for money, that's a function of [231] money.

Q Well, we don't have a barter system, you want to pay your bills, you get paid, there aren't too many substitutes, are there?

A No, sir.

Q Now let's take the portfolios of commercial banks. Do you know what percentage of the asset portfolios of the Connecticut National Bank is in real estate loans?

A Yes, sir. As of a portion of the total loans, I'm not sure about the entire portfolio.

Q All right.

A But just of loans, it is 40.8%.

Q And do you know—you don't know what that is

in dollars, I take it? It is in the record somewhere, you don't have to look it up.

A Yeah.

Q And do you know what the balance of its loans consist of?

A Well, there are personal loans of 38.2% and better known as commercial-industrial loans of 19.4%.

Q So that 38.2% of personal loans is subject to competition from savings banks, isn't it?

A Yes, sir.

Q And what did you say, 42% of mortgage loans?

[232] A 40.8.

Q 40.8%, that is subject to competition from savings banks, isn't it?

A Yes, sir.

Q So that's 78. —79% of the loan portfolio is subject to competition from savings banks, correct?

A That's the way it adds up.

Q And the balance—what did you say—of commercial-industrial loans?

A Commercial-industrial loans.

Q What percent? About 20%?

A Yes.

Q Now, I—if I understood your testimony, your earlier testimony correctly, commercial and industrial borrowers have more choices than do installment borrowers or people making small loans?

A This depends on the size, function and size.

Q At what size level would you think that they begin to have choices?

A Well, I would think that this would—that the—the low—it would be a continuous thing, I mean, in other words, that—

Q There are degrees of competition?

A Degrees.

[233] Q At all levels?

A There are—I would say that the—what we might call the threshold would be something on the order of—oh, something between fifty and a hundred thousand.

Q You think below $50,000.00 commercial-industrial loan a borrower would be largely confined to his own SMSA?

A Well, at least to places where he's known, places where it is—

Q For example, suppose there were a small medium-sized business that wanted to borrow $25,000.00 for inventory purposes, maybe it's headquartered in Bridgeport, maybe he's headquartered in Norwalk, would you think that that person would have the option to go to Norwalk to try to get such a loan?

A Well, of course, he has the option of going any place he pleases, he can go to California, I suppose, if he wants to, there's a question of viable alternatives, and I would say that there would be—first of all, most of these business banking relationships are long-lived, almost every state that's ever looked at that, so—they don't shift very often, and I would say that for the most part the local reputation and knowledge of the local economy, cost of doing business, the cost of obtaining business and so forth would—would have a limiting effect; now, if you say: can he go, well, of course, he can go there.

[234] Q Well, as long as he's happy and he thinks he's getting a fair shake, he'll probably stay with his traditional bank, right?

A Yes, sir.

Q If he is not happy, if he thinks he's getting charged too much, he has the option to go somewhere else?

A Yes, sir, anybody has that option.

Q I agree with you. The business which is resident in the Bridgeport SMSA which wants to borrow $25,000.00 doesn't have very insurmountable obstacles in going to Norwalk, for example, does it?

A No. You say: does he face obstacles, no, but the question is where it is worth his while in terms of the amount of effort he'd have to do and in terms of the fact that he would have to enter into a relationship which would necessitate him sort of baring his financial soul to another organization, things that he would usually like to keep confidential. This kind of thing that's not done all the time.

Q Well, isn't the fact of the availability of this alternative you testified at some length about potential com-

petition—doesn't that impose a check on what the—what the existing bank will do in terms of how high it will raise the interest rate and what kind of terms it will give him?

A Yes, to some extent, to some degree, and this would be [235] true for almost any—you know, the—could be true for, say, New York banks or any banks, in other words, there's always—the question is whether there's a differential that—what the differences would have to be overcome in order to make the—to make the judgment. My assessment is that the differential would be sufficient to—to localize these markets to a great extent.

Q In other words, the Bridgeport borrower might pay 1% higher to stay in Bridgeport than to go to Norwalk, are you saying something like that?

A I don't know what the percentage would be, there's some differences that even if it existed, that would not —he would not move. First of all—information in this kind of market is fairly hard to come by since banks don't disclose what they charge individual customers. There are other terms in most loans, there will be terms on, say, the compensating balance, there would be restrictions on what the individual might do with the funds, terms as to what his—liquidity he has to maintain, various combinations, the collateral and so forth. So it would be difficult for him to obtain the information without actually negotiating the deal to find out what the—what the terms would be.

Q It is your belief, then, that borrowers in the $25,000.00 range don't shop very much?

[236] A I would—I don't know. I don't know that I'd put any number on it, I don't know that—we studied —the study that we conducted at the corporation a number of years ago, had the number somewhat larger than on the average locally limited loans are somewhat—what larger than $25,000.00, but that study was based on data that was—it is rather old and it is—it is the only information we really have, but that was data that produced in the 1957 loan survey. Other than that, we don't have any agreeable good notion of what that cutoff might be.

Q So you don't really know?

A Well, we don't have any—we knew—we—a good feeling that the number was near fifty thousand, in that general range, at that time, and that's all we can really go on.

Q Did you base that feeling on any data besides the 1957 data?

A No, nothing for this particular case that I can—can—can recall. Now, there have been a number of different studies on more recent data which show the differences, the effective concentration on rates holding other factors constant by size of loan, and you just get a general continuum, the impact of concentration is higher for smaller loans, as—which this is consistent with what we have said here.

Q It is in the smaller loan area?

[237] A Yes, sir.

Q Where your turnover is more available locally, isn't that true?

A The larger banks—larger businesses have more alternatives.

Q They have more geographical turnovers, but the smaller borrowers have more institutional turnovers?

A The small business borrower doesn't have as many alternatives, say, the—as the personal—personal borrower.

Q That's the point, you have testified a little earlier that the person wishing to make a personal loan has—has a choice between a commercial bank, a savings bank, the finance company and maybe the automobile finance company, GMAC or something of that nature?

A Well, if they have a choice, but I think I indicated that there's—as far as the credit union is concerned, there's a substantial different, you must be a member, and we can expect the finance companies—I think that they serve a difference class of borrower, a higher risk borrower than is the case for either savings banks or commercial banks.

Q Do you know what rates the finance companies charge in the State of Connecticut?

A No, sir.

Q Do you know what rates the commercial banks charge for [238] consumer loans in the State of Connecticut?

A Not directly, no, sir.

Q So your conclusion that the finance companies charge a higher rate is based on general observation?

A General knowledge, and we just finished a study in the State of Maine in this area, and it is just general, I could probably cite sources if you give me some time, I'm familiar with, but I couldn't do it right now.

Q I don't expect you to have all this at your fingertips.

A No.

Q You don't happen to know what the rate is in Connecticut at the moment?

A There's usually a small loan law which confines what finance companies can do, we find in Maine that that small loan ceiling was reduced, that most of the finance companies left the state. We have virtually no finance companies in Maine.

Q What is the ceiling in Maine?

A Well, there's the—the law that did it is the ceiling after a thirty—on a renewal of the 36 month contract. I think the effective annual rate ceiling up to 36 months —I'm not quite sure what it is—it is fairly high, say, something on the order of 20, 25%, for—on an annualized basis. However, if that customer comes in and tries to renew his loan beyond [239] 36 months he—the finance company can only charge him 8% true annual rate, there's no way a finance company can make any profit at 8% true annual rate, I suspect that is true for most commercial banks and savings banks, too, so they have left the state.

Q Doctor Murphy, you are familiar, are you not, with the concept of prime rate?

A Yes, sir.

Q What is it?

A Prime rate is a—the minimal rate charged to the customers, best business customers, prime business customers of a commercial bank a—by the bank, it is

generally the rate which is administered by a group of money market banks which usually announce this change, it is usually New York City banks, sometimes California, once in a while a Chicago bank, major money market bank will then announce its change of prime rate and this usually—other banks follow and change the prime rate or—at least the money markets.

Q What you say administer, what do you mean by that?

A Well, okay, I mean that these—the prime rate is established by a few banks and other banks follow. Now—

Q Usually there's one leader and it is follow the leader, you aren't implying that they get together and do that?

A I have no knowledge as to whether they get together or [240] they don't get together. However—yes, there have been some changes in the prime rate concept recently. It is—some large New York City banks and large money market banks have gone to what they call floating prime and tying it to some money market indicator.

Q Right. And are commercial and industrial loan rates generally for any particular bank stepped up from the prime rate? In other words, prime plus 1% or prime plus 2%?

A Something along that line.

Q So that the prime rate is a—is a prime indicator of what the rates are going to be with a mark-up depending on credit and the size of loan and so forth?

A Depending on various factors, yes, sir.

Q And in your opinion, does the prime rate set have an effect on commercial banks throughout the country?

A No.

Q You don't think so?

A No, sir.

Q Do you think the prime—

A In the State of Maine it doesn't affect them one bit, which it does—

Q Do you think the—excuse me?

A I wish it did.

Q Do you think the prime rate has any effect on loan [241] rates in Connecticut?

A I would think so, yes, sir.

Q Why do you think it does in Connecticut and not in Maine?

A Well, I—I suspect that there are more what we might say prime borrowers in some of the large banks in Connecticut, and I am not quite sure why it doesn't exist—at least not around Bangor, Maine.

Q You think there might be more information available to the borrowers in Connecticut?

A That might be the case, yes, sir.

Q These changes in rate are published in the New York Times, the Wall Street Journal and the newspapers generally, are they not?

A Yes, generally there's a—financial press picks up changes in the prime rate, yes, sir.

Q So they get pretty widely disseminated?

A Yes, sir.

Q Do you think that a commercial bank in Connecticut can—can price its interest rates on commercial-industrial loans without regard to the general prevailing prime rate?

A Well, I think they'd have to consider that, but I—I would think that—well—all right, there's always a prime rate, okay, and you are always going to get some variation [242] above that, that's a floor, generally a bank will not, except under very unusual circumstances, give below the prime rate. I assume if a borrower had a very substantial deposit and wanted a $10,000.00 loan, they might—you know, very unusual kind of circumstances, but the differential between that prime rate and the rate that the individual customer might get would vary and it—and it would vary according to market structure. In other words, you—what's considered a prime borrower and what isn't may vary from area to area and will generally follow the notion of the characteristics of the market.

Q Do you have any evidence of that, or is that just your opinion?

A Well, there is—yes, there have been studies to that effect, yes, sir.

Q What are they?

A Well, there was a study just conducted by Professor Donald Jacobs published by the National Bureau of Economic Research which took a large sample of business loans from all over the country and he conducted statistical tests relating the rate to other characteristics of the borrower, characteristics of the loan and the level of concentration, in general he found there was a relationship, using the SMSA commercial bank market shares as the indicator of concentration.

Q Did he go into Connecticut loans at all in this study?

[243] A He had a nationwide sample, I assume that some banks responded to it. It was a—it was a sample that was—scientifically constructed sample.

Q Was there any separate statement limited to Connecticut banks?

A No, sir.

Q So that you would look at the aggregates by size of town, for example, and you—it might be DesMoines, Iowa, it might be Bridgeport?

A Well, this was a cross section analysis in which you relayed a multi-varied analysis in which the rate is posited as a function of several different variables and the statistic procedures designed to capture the marginal effect of each one with holding constant the influence of the others, that was the kind of technique, so in order to test, you would have to determine the particular data for each—what you would get as a—an equation with certain co-efficients estimated and a sum feeling for how well the equation in general performs, and to test any particular market you would have to have all the data, lug it in and see how each of these—there would be an error associated with each one, you would have to determine whether the error was positive or negative.

Q You are familiar, are you not, with the literature on potential competition, economic literature?

[244] A Yes, sir.

Q What are—what are the primary articles or sources on that subject?

A Well, there's a—there is a paper being—which was

conducted at the research unit of the Federal Deposit Insurance Corporation which ten—which attempted to relate the action, whether to enter or not to enter, to a group of—of variables, it is a multi-varying techniques saying the decision is a function of other variables and the statistical procedure tried to measure that probability and tested—that study was conducted by Doctor Gilbert, who co-authored this paper with me and will appear shortly in the Journal of Finance.

Q What did he conclude?

A He concluded that the best indicators are size of bank and con'—well, the—er—the expansion history, several expansion history indicators of the particular bank.

Q In point of time, what was the first important contribution to the potential economic—in the economic literature?

A In point of time? I don't know exactly, sir.

Q You are familiar with Bain's book, are you not?

A Yes, sir, that was about—I assume it was late 1950's or early 1960's.

Q And in general, what were his conclusions?

A I don't recall Bain's conclusions.

[245] Q Well, do you recall whether he dealt with localized markets or national markets?

A I don't—don't know. I don't know.

Q Do you recall whether he dealt with any financial markets?

A I don't think so.

Q He dealt with industrial markets, did he not?

A Yes, sir, I think—I'm quite sure he did.

Q Do you recall any more—any more recent literature on potential competition in the industrial area?

A I believe that there's been some work done in the Federal Trade Commission under—

A Michael Mann?

A Yes, sir.

Q And do you know what conclusions he reached?

A No, sir.

Q Do you know whether he dealt with national markets or local markets?

A I—I don't know. Once again, I don't think his studies were related to financial markets.

Q Do you know approximately how many commercial banks there are in the United States?

A There are approximately 13,500.

Q Did you—did you—er—indicate earlier that you [246] were on the staff of the Hunt Commission?

A Yes, sir.

Q And the correct name of that—

A President's Commission on Financial Structure and Regulation.

Q And what—what were the general conclusions of that commission?

A They were 89 separate recommendations.

Q What were the conclusions reached with—with respect to powers of savings types institutions?

A Well, the recommendations were that savings types institutions be given broader powers, very generally, that they be given broader asset powers, more diversified asset —or fund acquisition powers.

Q By asset powers you mean be able to make additional kinds of loans?

A More diversified kind of loans, yes, sir.

Q Did it make any recommendations with respect to their making commercial and industrial loans?

A I don't—there was a—as I recall, there was a statement that they—if they wished to serve business customers that they get a charter as a mutual commercial bank, which was another recommendation, that such chartering be permitted.

[247] Q That federal chartering be made available to savings banks?

A And they can be either a mutual commercial bank or mutual savings bank, and if they wished to remain as a savings bank, that they confine their business mainly to individuals rather than businesses.

Q All right. Those recommendations haven't been implemented as yet, have they?

A No, sir. I have—there is present a task force in the treasury headed by a treasuryman, I think there are members from the various regulatory agencies that are trying to put together a legislative package, my understanding is that in the lame duck session of this congress

that a—hearings will be held, although the administration will attempt to do this, beyond that, I don't have any knowledge.

Q At least it is in the legislative drafting stage?

A Yes, sir.

Q You testified earlier that it was your opinion that the standard metropolitan statistical areas were relevant banking markets, generally?

A For local customers, yes, sir, for local customers.

Q For local customers.

A Right.

Q But not for local industrial customers?

[248] A Depends on the size in this case.

Q Is it your opinion that the Bridgeport SMSA is a distinct market—banking market from the Norwalk SMSA?

A Yes, sir.

Q And that is distinct from—what's the other one—Fairfield SMSA?

A Yes, sir.

Q And what—on what do you base that conclusion?

A I base that on the amount of commuting as stated in the plaintiff's exhibits.

Q Do you think that—that banks in the—er—Bridgeport SMSA can price their services without regard to the price which banks in the Norwalk SMSA charge?

A I don't know if they can or they can't.

Q You don't have an opinion?

A I—I assume they could if they wanted to.

Q Do you have any knowledge of whether—whether Bridgeport banks or Norwalk banks advertise in the local newspapers?

A Bridgeport banks advertise in these newspapers?

Q Yes.

A I have no knowledge, but I assume they do, some of them do.

Q Do you have any knowledge of what the area—geographic area of circulation of Bridgeport newspapers is?

[249] A No.

Q Or the Norwalk newspapers?

A Yes, sir.

Q Isn't one of the determinates of when a company can price its products a knowledge of borrowers and customers?

A Information is one part, yes, sir.

Q So if information is freely available to the customers, then they are less likely to be—able to be charged in excess of price, isn't that right?

A That depends on the terms—on the relative costs and benefits of the alternatives to these individuals.

Q Do you know what the—what the geographic area in which Connecticut National Bank has its branches?

A Yes, sir.

Q Does it cover more than one SMSA?

A Yes, sir.

Q Do you think—

A Several.

Q Several?

A Yes, sir.

Q Do you think from the standpoint of that bank that its market is just the Bridgeport SMSA, or do you think it is—

A Well, they operate in different markets.

Q In reaching your conclusion that these are different [250] markets, did you—do you have any knowledge as to whether they price their products differently in different SMSAs?

A No, sir. But you have several alternative methods by which—say, any market power could be exploited. It could be done by the price of services, it could be done via the quality of the service, for example, may economize on labor and allow queues to build up at certain hours where you could do it in one area and not in another because of competition. There are various methods of exploiting. That's why you might go back to the Mann-Bain studies, these studies measured a profit rate as a function of concentration. Well, that's rather difficult because of the problems of measuring profits, because it is entirely conceivable that markets power could be exercised in some way that affects costs, for example, they could economize on costs which, of course, would show up in increased profits, but on the other hand, they may just pay more generous salaries to officers or have more plush

facilities or permit more trips to conventions or whatever fringe benefits bank officers may enjoy.

Q You haven't made any study as to whether Connecticut National does any of this differently in any of its different branches, have you?

A No, sir.

Q And you don't have any knowledge as to whether it does, [251] either, have you?

A No, sir, but let me elaborate on it a little bit. What we're interested in here is the general relationships between performance and market structure, and we want to have a situation in which we have desirable performance in these markets from the point of view of public policies. If a bank has market power and doesn't exercise it, that's not sufficient reason for—to conclude that it should have the market power because it doesn't exercise it.

As a matter of fact, if I were a stockholder in that bank and found that it had market power it wasn't exercising, I think I'd be very unhappy, so in a matter of public policies, I wouldn't leave decisions of this point to either the good will or bad—decision of commercial or banking officers, if they so existed, I would want to have a structure that would in essence force this relationship by competition. It's a much more efficient way of allocating resources.

Q In your opinion, at the present time are First New Haven and Connecticut National in significant direct competition with each other?

A They are in that four-town area, Ansonia, Derby, Orange, Milford area.

Q In your opinion, is that four-town area a market?

A No. I said we had some difficulty determining exactly [252] where that would fit in. Or where the dividing line would be.

Q So you don't think that it is a separate market, do you?

A No, sir.

Q Why not?

A Because it is—it is within the standard metropolitan statistical area—

Q Because it is subject to the influence of the other banks in the standard metropolitan statistical area?

A Yes, sir. Yes, sir.

Q In other words, you don't think that a bank in that four-town area can price its services without regard to the competition between the SMSA it is in, do you?

A No, sir.

Q So that as far as you know—

A As I indicated, at this particular—this particular situation is one where the data that we examined, branch office patterns and commuting patterns, are somewhat inconclusive, so we could draw the line at various places there which would affect the degree to which the defendants currently compete or don't compete.

Q Well, in your opinion, that is the only geographic area, even though it is not a market, where there's any direct competition between the two banks?

[253] A For localized customers. They may compete for larger order customers.

THE COURT: Excuse me. Would you read back the last question?

(Question and answer read.)

A Customers with larger balances.

Q And for those customers with larger balances, they have other alternatives as well, do they not?

A At some point, yes, sir.

Q As a matter of degree, as they get bigger, they have broader geographic alternatives?

A Yes, sir.

Q But for the smaller customers in the New Haven SMSA, for example, it is your opinion that the Connecticut National Bank is not in competition for their business?

A Except for this one area that we mentioned, yes, sir.

Q Right, and it is your opinion that for the smaller customers in the Bridgeport SMSA, that First New Haven is not in competition for their business?

A Yes, sir, except for—except for this area.

Q Except for this four-town area?

A The four-town area, right.

THE COURT: I know this is somewhere in all these exhibits, and we'll probably get to it, but I'd like [254]

my notes to reflect this right now, in the four-town area, do you have readily at your fingertips—

THE WITNESS: Yes, sir.

THE COURT: —or branches, I should say, branches each of the defendants has? I do recall there is a chart on that, isn't there?

MR. CLARK: Yes, sir. P-43.

THE COURT: P-43? Thank you.

THE WITNESS: I think it is 63.

MR. CLARK: I'm sorry. 63.

THE COURT: Okay. I didn't mean to interrupt you, but I just want to have my notes reflect that that's the exhibit. You may proceed. I can look that up, Mr. Reycraft.

MR. REYCRAFT: I'm looking for it, too, your Honor.

A It is this one that has a different kind of paper.

Q Referring to Exhibit P-63, Doctor Murphy, that exhibit shows the choices which small borrowers have in the four-town area, does it not?

A In terms of the number—it shows the number of offices—number of banks operating in the area, yes, sir.

Q Right. Well, I don't know whether—it shows there's a total of 19 offices in the area, also, does it not?

[255] A Yes, sir.

THE COURT: It shows what, Mr. Reycraft?

MR. REYCRAFT: A total of 19 offices in the four-town area.

Q Now, I don't know whether you are familiar, Doctor Murphy, with the offer and the commitment which these two banks have made to divest six offices in that area to at least three new entrants. Are you familiar with that?

A Very generally.

Q Well, assume that it is a fact that that will take place, and on that assumption, do you have an opinion as to whether in that four-town area competition will be better off or worse off after that takes place?

A Are you saying that—

MR. CLARK: Your Honor, I—I wish to renew the objection which I made at the outset of the trial. I think this whole matter of settlement or settlement attempts is

not relevant, and I would ask that it be excluded from the questioning in this—

THE COURT: Well, I think it goes a little bit beyond just settlement attempts. If I recall, I asked counsel if divesting one's self of certain banks in the area where potential competition is injured, has any effect on the Court's decision. I think the [256] government's position was: yes, but it is a two step affair, and Mr. Reycraft, I believe, said: no, it isn't, it is all part and parcel of the case.

Now, ordinarily, of course, settlement discussions are not part of the ordinary case. But both sides admit that divesting branches is relevant and the only thing they disagree with is whether it is relevant.

Now, if you have some cases handy that I can immediately look up to see if it is a two-step affair, that is: a bifurcated type of thing, fine. If you don't I could take the evidence and not give it any weight. If later research reveals that I'm premature on it—

MR. REYCRAFT: Your Honor, if I may say so, there's no bank merger case with which I'm familiar which has gone to trial in which there has been a two-step process. On the other hand, I would have to say—well, I referred the other day, your Honor, to the Wells Fargo first western merger in which the comptroller said: I approve the merger and you divest branches.

THE COURT: I gather that wasn't anything in writing that I could have looked up in a case book.

[257] MR. REYCRAFT: It's a comptroller's opinion, I can hand your Honor an opinion that the comptroller wrote on exactly that subject.

THE COURT: On the one hand, it may be more appropriate for a comptroller to do that than a Court, but apparently a Court can do that.

MR. REYCRAFT: I don't see any bar to a Court doing it, your Honor.

MR. CLARK: Your Honor, I would make two points, I think I said there was no bank case in which there was a two-step process, and the reason that is so, at least since 1966, is that the law has provided that there shall be an automatic injunction against the merger, so up till now it has been assumed that the relief or the step which

should be taken in the event of that the merger is illegal is a permanent injunction, the matter of relief has already been settled, so to speak, by the law, which provides for the automatic injunction pending the final resolution.

THE COURT: Well, let me give a hypothetical, Mr. Clark. Let's just assume, for the sake of argument, that two banks have a hundred branches each and they want to merge, and the experts say: the merger [258] helps competition except in the Town of East Haven, because they happen to have two branches directly across the street from each other. So the two banks get together and say: let's give up a branch, so we have a 199 branches instead of 200. Isn't that more than a compromise? Isn't the bank's position at this point saying: well, if there's one little area that has to be carved out, we'll carve it out.

MR. CLARK: That is possible. Although certainly under the circumstances which you have—have outlined, in a state like Connecticut with banks of that size, it would be, from a practical standpoint, not the case that East Haven would be the only town to be affected, but, of course, it was a hypothetical.

THE COURT: Right.

MR. CLARK: And so I guess I should address myself to that.

THE COURT: Well, let me take another approach, then. The expert is on the stand. He says in his opinion in this four-town area there is significant competition between the First National and the—and CNB. All right, now, on cross examination it would appear to me that counsel could say: why is there this competition? And the expert—I thought was [259] about to get into—well, because there are six branches of CNB and four of the New Haven. Now, I think it is proper, therefore, after that for counsel to say: assuming that there were only two New Haven branches and four CNBs instead of six and five or something like that, would you still consider—would you still have the same opinion?

MR. CLARK: Yes, your Honor.

THE COURT: So perhaps—

MR. CLARK: Pardon me.

THE COURT: So perhaps on my ruling I will have to say that I will overrule the objection, but not on the

ground that it is bringing a compromise into the case, or in fact on the ground that I have taken a position on the one and two-step argument. I think it is just proper cross examination.

The expert has said in his opinion there is significant competition between the two defendants in four towns. I think it is proper cross examination to now dissect, bisect on cross examination that opinion.

MR. CLARK: Yes, your Honor. To the extent that he is attempting to learn his reasons for his conclusion, but it is quite obvious that Mr. Reycraft's purpose is to obtain an opinion upon the viability of a settlement [260] offer. Now, may I cite two cases?

THE COURT: Yes.

MR. CLARK: In view of your Honor's request along those lines. One is—a recent Supreme Court Decision, Ford Motor Company versus United States, 405 U.S. 562, 1972. Now, this—a case involving acquisition by Ford Motor Company of Auto-Lite Battery Spark Plug assets, several years ago, there was a trial on the merits in District Court. The Court rules in favor of the government that the merger violated Section 7.

Now, the merger had been consummated, there was no automatic stay such as there is with banks, and so then after ruling on the legality, then the District Court had a subsequent hearing which lasted almost as long as the trial itself on the manner of relief, what would—what would be necessary to put these companies as best as possible back into the situation in which they were before the merger.

Now, there was no hearing during the trial on the merits as to whether or not Ford's spun off Auto-Lite Battery plant in Ohio—

THE COURT: I can research this and I suppose come up with an answer. But rather than take the time, I'll [261] modify my ruling to this degree: I'll sustain the objection, but merely as to form, I mean I think your question did say: are you familiar with the settlement we offered, or something like that.

MR. REYCRAFT: Yes, sir, I will modify my question, your Honor, and I would like to make clear, your Honor,

in response to what Mr. Clark has said, "I'm not trying to negotiate a settlement with him in public, we have said that we will divest these six branches no matter what this Court does, and this is not a negotiation, this is a commitment that we are making, and we say to the Court that if Mr. Clark is really concerned about the competitive effects we are disposing of what he says are bad competitive effects and we think the Court should judge the merger on the basis of what we have absolutely committed that we will do, and that's all that we're saying, we're not trying to negotiate with him.

THE COURT: I know, but the key thing right now is what this expert thinks of it, what he thinks of it.

MR. REYCRAFT: I'll ask him the question.

Q Doctor Murphy, do you have an opinion as to what the competitive situation would be in the four-town area claimed by the government if the two banks following merger do what [262] they have said they will do, namely: divest six offices to at least three new entrants into that area?

A Six of nine? Do you know which six they are?

MR. REYCRAFT: I'll have to consult with my colleagues.

MR. CLARK: Your Honor, I think the witness needs more information than simply whether or not—

A I was going to ask him that, to give me the deposit figures.

THE COURT: Just one moment. Let's not have colloquy.

MR. REYCRAFT: The six offices on—

THE COURT: Excuse me, Mr. Reycraft, I assume this is some sort of an objection?

MR. CLARK: Yes, sir.

THE COURT: All right. State your grounds.

MR. CLARK: Question is too broad and too general to provide a basis for an answer. He has said that there will be divesture, there are many different ways of divesting and lots of different types of contractual provisions which could affect the ultimate result of this so-called divesture.

THE COURT: Well, if that's an objection, it is over-

ruled. It is not what you might think, it is [263] what the experts might think.

Now, I just assume, I don't have to tell you, Doctor Murphy, that if you don't have enough facts to express an opinion, that obviously you don't have to express an opinion or surmise on conjecture. I mean you can say—

THE WITNESS: Yes. sir.

THE COURT: —"I need more facts," you understand that?

THE WITNESS: Yes. sir.

THE COURT: All right, go ahead. Objection is overruled.

Q Doctor Murphy, the offices—do you have—you have the other exhibit which shows the—the four-town area, do you not? No. 63?

A Yes, P-63 I have it in front of me.

Q Connecticut National's Orange and Milford offices, you have those marked?

A Yes, sir.

Q One of its two Ansonia offices. First New Haven's Derby office, and two of its three Milford—Milford offices.

Now, assuming that those divestitutes take place to at least three new entrants into the market, that is: banks who are not now there with offices, do you have an opinion as [264] whether that would have a beneficial competitive effect?

A As part of this merger or as just a general—

Q I'm just talking about in the four—just limit yourself to the four-town area? Would it have a beneficial effect in what the government claims is a four-town area?

A I really can't say unless I know what the outcome of the merger is.

Q Well—

A I mean there are two different—if the merger were permitted and if the merger weren't permitted, they would certainly be different.

Q If what?

A The merger between CNB and First New Haven, New Hampshire—First New Haven National Bank were permitted, or it weren't permitted, will certainly effect

the number of offices and deposit shares that would result.

Q Well, this is on the assumption that the merger takes place and these offices are divested. In your opinion, would the four-town area be better off or worse off competitively?

A That would be—I would have to know—have to have some feel for what—what would happen to the customers of those offices. There are sufficient number of offices in surrounding towns, and we have seen the pattern of commuting with these branch offices, especially in this area, to feel that very [265] narrowly drawn town lines are not relevant. So to the extent that these customers of this—of these branches feel satisfied with the services, we really can't say what they would do. They certainly have the capability of going to an office that's just as convenient, at least as shown by our data, they do travel back and forth in terms that—the derivation of business here, so we don't know what the three remaining branches—what their position would be in the market after the merger, three—those three branches would be combined under the—under the single consolidated bank, we don't know what their position—what the net effect would be on concentration.

THE COURT: I am just a little bit confused, and that's perhaps because you are on a much higher level than I. I have to get myself up there before I can rule on this case. But let's just assume there were only three branches in those four towns. Would it still be your opinion that—I mean let us assume there are only three branches before this case ever started and that there were three—there were three other entrants located in those four towns, as a matter of fact, before this case ever started. Would you still feel—

THE WITNESS: No, no, that would be—I would [266] say that would be beneficial.

THE COURT: All right. But here we have a situation where we have a combination of some offices being

consolidated and some being—some being divested, and we dont' know what the net effect would be. The net effect may be offsetting, I can't—

Q Do you mean—

THE WITNESS: Let me—

THE COURT: Just a minute. The Court—for several reasons, one, I'm not sure a question is pending, and secondly, the court reporter can't pick both of you speaking at the same time. I think that—I think you ought to proceed in your own way, Mr. Reycraft, and the Court should hold its questions until the end. Go ahead.

MR. REYCRAFT: Thank you, your Honor.

Q Doctor Murphy, assume that the deposits left in the offices of the combined bank in the four-town area will be 26.9 million dollars, whereas the combined deposits of the two bank's offices now is 55.8 million dollars, and assume as we previously discussed that Connecticut National's Orange and Milford offices will be divested, one of its two Ansonia offices, First New Haven's Derby offices—office, and two [267] of its three Milford office, and that the combined bank retained only one office in Milford, one in Orange, and one in Ansonia, do you have an opinion—an opinion as to whether there would be a net pro-competitive effect generally by the ad'—additional choices available to consumers in those—that area?

A Well, consumers would have—well, they would now—well, it's just a—very difficult to say, I suppose—yes, they would, in terms of having more choices available, whether—

THE COURT: Excuse me, Doctor Murphy, again, sorry to interrupt, but it just occurred to me. Have you thought about this? I could see that you kind of feel—is there a feeling you prefer to think about that for a while? Before you answered?

THE WITNESS: Well, I think I'd—not only would I like to think about it, I think that the—the evidence and the number of assumptions that are made—I mean counsel could make assumptions that are sufficient to—to indicate that there would—you know, based on our

other testimony here, that there would have to be a pro-competitive effect, I think that's what—what's occurring. I mean—if you make these assumptions, I don't know whether these assumptions are realistic or not.

[268] THE COURT: Which assumptions?

THE WITNESS: Assumptions about where deposits would remain after the—the combination of the divestiture and the merger. I mean he's just assumed 26 stay here and that the rest leave, is that the effect pro-competitive? Well, yes, there are more offices and there's not much left for the defendant banks. But I'm not sure whether that relates to reality or not.

Q In general, though, it is your opinion that consumers are better off with more choices rather than less choices, isn't that right?

A Yes, sir. Yes, sir.

Q So that unless something which is not included in one of the assumptions I gave you occurs, consumers would generally be benefited by having more choices available in that area, isn't that right?

A Than fewer, yes, sir.

Q Yes, sir.

A And this, of course, depends on what happens in—

Q I'm not asking you what happens in Willimantic or Norwalk or someplace else, we're talking about the four towns.

A I'm not referring to anyplace else, I'm just referring to the—more—more competitors, yes, more choices, yes, but [269] not only do we measure the number of choices, we measure their size distribution, and I am not quite sure what the size distribution would be after this recent—

Q Well, you are entitled to qualify your answer in that way.

A Yes, sir.

Q Doctor Murphy, let me ask you again using the four-town area as perhaps a laboratory or something, of what importance is it to the small borrower or the small depositor as to what the total amount of deposits in any particular office is?

A What importance?

Q Yes.

A Well, the importance the total in any particular office as related to the—that in and of itself is not of interest, it is the terms, it is the terms, it is the terms and the quality of the service which is important.

Q I want to buy—borrow $500.00 to buy a television set, for example, all right, what does it make to me whether the office I go to is an office of a $400 million bank or a $50 million bank?

A Well, I think that would—it would—it is not the size of the bank, it is the quality of the service that should be of importance.

Q Well, I mean $500.00 looks like $500.00 to me?

[270] A Yes, sir.

Q And I get my television set?

A So it depends on the term of the loan, whether you have to pay 800 or 600 or 700.

Q Assuming that the interest rates are substantially identical, does it make any difference to the customer?

A On the basis of the quality of the service, no, we're interested in performance.

[271] Q Knowing that there's some disparity in service?

A Right, right. Yes, sir.

Q And suppose I wanted to make a deposit, I have got the same $500 and I want to deposit it in an interest bearing account, what difference does it make to me as to the size of the bank in which I make that deposit as long as I'm under the FDIC insurance?

A Assuming quality of—and—quality of service and so forth, it would not make a difference.

Q So what, in your opinion, is the significance of the size of a bank in serving small customers?

A The size of a particular bank?

Q Yes.

A Well, it's conceivable that a larger bank would have a more diversified line of services, would offer more services, so he could shop, conduct all his business under one roof.

Q It might give better service?

A It might be more in terms of greater variety.

Q Can you think of any set of circumstances under which the larger bank would be likely to give less service than the small bank?

A I think it would depend on the market power existing in the—in the market area, which would determine the level and quality and quantity of services.

[272] Q But if there are adequate—an adequate number of choices the size of the bank really wouldn't make any difference, would it?

A Holding everything else constant, no.

Q All right. Now, in your testimony about potential competition you dis—you discussed who might be likely entrants and what the impact would be on firms in a market looking over their shoulder at the firm in the wings waiting to become an entrant and it might have some impact on their business behaviour, right?

A Yes, sir.

Q Now, in your judgment, based on your knowledge of the Connecticut banking market generally, would you think it would be prudent for a banker to—who is considering entering a market to take into consideration the presence of savings Banks as well as commercial banks?

A I think he should consider the whole picture.

Q Say your Connecticut National Bank, for example, which according to your testimony we have agreed 79% of its loan business is subject to competition from savings banks. Now, supposing it is considering entering the Willimantic market, for example, the Willimantic area, would it be prudent for that bank to consider the savings bank competition which exists in that area?

[273] A I suppose it would be, yeah. It would be also prudent for him to consider the—a lot of other things, too.

Q But that would be an important factor?

A That would be an important factor, yes.

Q Because within—within that Willimantic area there probably is a finite pool of savings deposits, would not that be reasonable?

A Yes, sir.

Q And it would be shared among those firms who are competing for it?

A Yes, sir.

Q And that would mean both savings banks and commercial banks?

A For that particular kind of deposit, yes, sir.

Q And there would be a finite number of mortgage—

people seeking mortgage loans, there's be a certain quantity of money sought for mortgage loans, and if there was competition in that area from a savings bank it would be prudent to consider that competition, wouldn't it?

A Yes, sir.

Q So do you think its sound as a matter of economics to limit the analysis of potential competition only to commercial banks in the State of Connecticut?

A Well, I think that depends on a number of factors. [274] The reason why—one of the reasons why entry by de novo branching or by foot hold—well, especially by de novo branching—as an important tool—is the fact that the entrant need not provide a full line of services. In other words, he can go in—and the whole rationale for the benefits of branching is that the different offices can offer different combinations, depending on the local area, the characteristics of the local area. So it's conceivable that where there's a strong demand for loans, a bank could enter, establish a branch and have much more loans than deposits. I think it would depend on the characteristics of the business in that particular area.

If—if, say, for example, demand deposits, that, of course, would be limited to—if it wanted to set up that kind of corporation—see, it has this flexibility, whereas the bank—say, the entry of a new bank would have, by necessity, by definition, have to have all its assets equal liabilities for any particular branch, that need not be true for a branch bank, whereas it has to be true for all branches, whereas for any one particular branch that may not be the case, so they could go in on terms of whether there's a strong demand for loans or just for loan services or if there's a strong demand for deposits, checking accounts, they could go in on that basis.

[275] Q If I understand you correctly, then, if the demand in a particular market is for—largely for commercial and industrial loans—right?—then in that circumstance a commercial banker would be justified in more or less ignoring the savings bank competition, is that generally what you are saying?

A Yes, sir—well, it depends on what he knows—what kind of services are in demand in that area, as to what he would ignore and not ignore.

Q Well—but assuming that the consumer demand runs roughly in the same proportion in the various areas of the state that it does for Connecticut National bank overall, which is 79% mortgage loans and personal loans, you don't —you can't think of any areas which—which only requires commercial and industrial loans, can you?

A No, sir.

Q And doesn't require real estate and personal—

A Yes, sir.

Q That would be probably unrealistic, wouldn't it?

A Yes, sir.

Q And you would expect that in the SMSA's which you have identified and described that there's no reason why the rough proportion of demand for loans wouldn't be the same in each of them, is there?

A Well, it's—I think the—if we look at both [276] defendants we'd see that there's a difference, substantial difference in these ratios. I think—see, a commercial bank having the broader range of powers, see various kinds of configurations depending on their capabilities and what they choose to specialize in.

Q Well—

A I mean, I don't know that Connecticut National Bank's portfolios certainly differ from First National Bank's in terms of the importance of business loans, let's say, so I—you know, it's difficult to say that this bank reflects a demand in this area. It's certainly affected by it, but it wouldn't reflect it necessarily for all institutions.

Q It wouldn't necessarily be identical, the same throughout the State?

A No, sir.

Q All right. Well, let's refer to First New Haven for a minute. What percentage of its loans for the portfolio consists of mortgage loans?

A 38%.

Q And with respect to that part of its loan portfolio it receives competition from commercial—from savings banks and savings and loan associations?

A Well, as I recall those figures, First New Haven has a—a greater percentage of real estate loans in the form of [277] commercial—commercial real estate loans.

Q In other words, their real estate loans are to businesses?

A Do savings banks ever do that?
Q Not that—
A They do, but not to the extent of commercial banks.
Q There's no legal prohibition on their doing it?
A No.
Q If I own a business and I own real estate I can go to a savings bank and get a loan on that real estate and use the money to build up inventory, can't I?
A I believe so.
Q No reason why not?
A Except that you'd be financing a short term asset with a very long term liability.
Q But I can do it?
A I suppose so.
Q And what percentage of First New Haven's loan portfolio consists of personal loans?
A 35%.
Q So that 73% of its total loan portfolio is subject to competition from savings banks, is that right?
A Well, I don't know that as a realistic proposition, that savings banks are in the commercial real estate business [278] as most as most commercial banks.
Q How much would they have to be in it to satisfy you that they were in competition?
A I wouldn't—I couldn't say offhand, I'd have to look at the data.
Q Are you aware of any difference in the legal powers of commercial banks and savings banks with respect to making real estate loans to businesses?
A Not—no, sir, not offhand. I reviewed that, but I can't remember exact facts. We reviewed that earlier.
MR. REYCRAFT: Your Honor, I have quite a lot more. I don't know whether you want to break now or continue.
THE COURT: Are you at a convenient place for a break?
MR. REYCRAFT: Yes, your Honor. Yes, sir.
THE COURT: All right, we will recess until tomorrow morning at 10:30. You are aware, gentlemen, that Friday I have an assignment in New Haven?
MR. REYCRAFT: Yes, sir.

(Whereupon court adjourned at 4:00 p.m.)

[279]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

vs.

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR.

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 12th, 1972

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[280] Appearances:

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[281] THE COURT: Are the parties ready to proceed?

MR. REYCRAFT: Yes, your Honor.

NEIL MURPHY, resumed the stand and testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. REYCRAFT:

Q Doctor Murphy, I believe yesterday you testified at Page 215 of the transcript that Connecticut National Bank's IPC time and savings deposits were $101,356,000.00. Would you mind taking a look at Exhibit P-30 again? I think you might find that you inadvertently misstated that number.

A Well, mine is—is Xerox, and it's bent in so—that's conceivable. And it's very, very—very dim.

Q Let's see if we can find you a better copy.

All right. I think that number may be 187,559,000, but we'll check that. I realize the copy—

A Well, I have—I may have been—inadvertently referred to the wrong—the wrong bank. But it is not clear

from this report which—the number I have—my testimony, I guess, was incorrect. I was referring to P-31. P-30 shows a hundred sixty-three million in my—my copy.

Q Is that total IPC time and savings?

A That's—yes. Time savings deposits of individuals, partnerships and corporations.

[282] Q Well, this is strictly a legibility problem, I'm sure, Doctor, so I'm not being critical of your—may I show you another copy—

A Yes, sir.

Q —and ask you if you will refer to this number?

A I'm referring to this number up here.

Q On Line 11 on the back side of the call report under Schedule F it shows $187,539,827.00 for total time and savings deposits.

A Yes.

Q The line—Line 5, as you testified just a minute ago, shows 163 million dollars, six—163,635,939 for individuals, partnerships and corporations.

Okay. And that is for the Connecticut National Bank, is it not?

A Right, right.

Q Doctor Murphy, did you participate in the preparation of an article called Impact of Market Structure on the Price of a Commercial Banking Service?

A Yes, I co-authored that paper with Doctor Frederick B. Bell.

Q Do you have a copy of that article with you?

A No, I don't.

MR. REYCRAFT: Would you mark for identification [283] as Defendants' Exhibit 53 an article entitled—a copy of an article, I should say—entitled: Impact of Market Structure on the Price of a Commercial Banking Service by Frederick W. Bell and Neil B. Murphy?

(Defendants' Exhibit 53 was marked for Identification.)

Q I hand you a copy of that document, Doctor Murphy.

Would you tell us generally what the objective of your research for that article was?

A Well, the objective—the objective of the research, as I recall, was to measure the—the impact of concentration, or market structure on prices, holding constant, the influence—the cost of organizations.

Q And will you turn to the second page of that article which is—as Page 211, from the Review, the original publication in the Review of Economics and Statistics, and refer to Table 1?

A Yes, sir.

Q Now, am I correct that the column to the far right shows what you determined to be the concentration ratios?

A Yeah. There are—well, there are a number of different methods of calculating concentration. I think we had eight different measures.

Q And how did you—is there any one measure of [284] computing concentration which is superior to others in your view?

A Well, what we did was try to test that out, sir.

Q Well, will you refer to the—to the concentration ratio to the extreme right on the column for New Bedford?

A Yes?

Q Is that the highest concentration ratio among any of the cities which you studied?

A New Bedford? I'm sorry.

Q Yes.

A Yes.

Q That's 99.99%, right?

A Yes.

Q The share of the largest three banks?

A Yes, that's what the table says, right.

Q And the purpose of this study was to determine whether there was any measurable relationship between concentration ratios and prices charged for regular checking accounts, isn't that right?

A That's correct, that's what it says.

Q Does the table show that—that New Bedford has the highest concentration ratio of those cities studied—

A Yes.

Q And does it show that New Bedford had the lowest average estimated annual price?

[285] A It shows that, yes, sir. However, this is just a table, it is not the—there are other tables in here that are—are relevant.

Q Right.

Q Are more relevant.

Q Right. Does it show that—that New Haven has the third lowest price for average cost of checking accounts?

A Well, there are—I—I can't go through and check that out quickly. I—I have no reason—

Q Let me suggest—

A —I have no reason to—I assume that you did and that you are—

Q I want you to be satisfied, Doctor, I don't—I'm not testifying here.

On the first column under average estimated annual price, New Bedford shows $28.44—

A Right.

Q —is that right?

A Right.

Q So if you will just look up and down that column, I think you'll find that the—the next lowest price is Brockton with 29.58, is that right?

A Yes.

Q And the third lowest is New Haven with 29.61, isn't that [286] right?

A That's right.

Q So what—what conclusions do you draw from the relationship between the concentration ratios and the prices of checking accounts in those cities?

A Well, I draw nothing from this table. This is the data that went into our testing procedures.

Q Did you—did you derive any other conclusions with respect to New Bedford, for example?

A No, sir. You—let me—can I explain the methodology in some detail?

Q Yes.

A This table is the data that went into a multivarious statistical analysis. By this I mean we posited

a relationship between prices, cost—between prices charged, cost, concentration and random unmeasurable factors, and that the—the equation that—that's—that specifies that relationship, this equation one on Page 212, we then estimate that relationship and Table 2 is the relevant table for interpreting the results of this article. Table 2 is an analysis of the data presented in Table 1 when this parameters—of this Equation 1 are estimated using appropriate statistical techniques.

What we are trying to—what we—what the results [287] indicate is that—and this is—we say—as you recall, I said there were eight different measures of concentration, and because there is some discussion in the literature as to what's the appropriate measure of concentration, some discussion at one place or another about what's the appropriate one, we decided to test several, in fact, all eight, and we found that our results were not affected seriously by the concentration measure used, and that we—that the relationship between prices and the joint relationship of—the prices and the joint—were jointly determined by costs, concentration and other facts, and that the relationship is positive and statistically significant.

For example, look at Equation 1. We see that the third number under there—let me interpret this for you —the third number—

Q Where's Equation 1? Is that on Page 212?

A Yes, sir—down—if we look at Table 2—Equation 1, we look at the first—going across the first variable—see Paragraph sub J—the third number down there underneath the number in parentheses is the measure of the—as to whether that variable is statistically significant in explaining variation in the dependent variable.

If that number exceeds 1.95 via the standard statistical theory, if that number exceeds—that's known as the T ratio— [288] if that T ratio exceeds 1.95, that estimated parameter, which is the first number above there, is a—over a 95% chance—and in this case, I think it would be 99% chance—that that relationship is —that that parameter is statistically significant, different from zero.

In both cases we find that for those variables which we measured, that the relationship is consistent with the theoretical hypothesis which we formulated. That is: that prices are related to cost, which we would expect, and are related to concentration, which is one of our hypotheses, and that both factors are statistically significant.

There are a—the theory hypotheses that there are a number of other factors that at any one time we cannot measure and we don't really know how to measure, and that their influence on the dependent variable is random. And we tested the—what we call is the error term to see if, indeed, that variation is random. Our test indicated that we could not reflect the hypotheses that there's any systematic behavior in the nonmeasurable elements.

So we conclude from that that concentration has—as far as this particular test is concerned—that concentration has a statistically significant impact on prices, holding constant the influence of cost and allowing for random variations.

[289] The theory that we're trying to—and the whole basis for our analysis and the whole basis of our case—is that any particular point in time there may be variation from the positive relationship, but in the long run there's a tendency towards the kind of hypothesized relationships between structure and performance, and these tests are consistent with that.

If you are interested—you seemed to show an interest in my work—there's a paper in the Journal of Financial and Quantitative Analysis which up dates this study with similar procedures for a larger—approximately 180 SMSAs, and I think that New England SMSAs were included, and we found similar results and found, in fact, our estimating equations performed on the whole much better than these.

So it is on the basis of studies like this that I conclude that the hypothesized relationship in banking—between structure and performance holds.

Q Well, in Table 1, the Fall River referred to—is that Fall River, Massachusetts?

A Yes, sir.

Q And the New Bedford referred to, is that New Bedford, Massachusetts?

A Yes, sir.

Q Do you know approximately how far apart those—these are SMSAs, again, are they not?

[290] A Yes.

Q Do you know about how far apart they are?

A I don't recall, no. This paper was done in 1967, the work was done.

Q Well, it shows—the table shows, does it not, that the highest average estimated annual price is for Fall River with $34.04, and with a concentration ratio of approximately 88%, and the lowest is New Bedford with $28.44, and the concentration ratio of 99.99%? It seems to me that this indicates a randomness about the results that are reached.

A That's what I just indicated, we're interested—not interested in the random element, we can't—we can't measure it, we're interested in the overall long-run tendency in formulating policy. Remember, I was referring to—for example, Doctor Glantz' testimony regarding the projections. That you aren't worrying about long—in doing this kind of projection, you aren't interested in short-run variations around a long-run trend, you are interested in the long-run tendencies involved, and that's the basis of our—of the conclusions one—one takes from this paper and from other papers that have been—other studies that have been conducted.

Q Okay. I won't—don't pretend to follow all this, but on the last page of your article, Page 213, you conclude, anyway, that since—that economies of scale existing banking and [291] you also conclude that, quote, "Increasing the average size of firms within a market area by merger will lower costs, which should reduce prices, but the merger will also bring about increased concentration and higher prices." And you go on to say, "The net results depend upon the relative magnitude of these influences." You recall that, don't you?

A I'm reading that here, yes.

Q All right. Now, you would agree that in general—and you found on the basis of your investigation that increasing the average size of firms by merger does lower costs, is that right?

A That's—no, that's not right.

[292] Q Well, I guess—I really don't understand. Could you explain that?

A Yes, the study referred to, the reference here is to one which is a study also conducted by Dr. Bell and myself—in fact this was a part of that study. It was a comprehensive study. That—we state that economies of scale—and this is with 1965 data—that with 1965 data there was a finding that economies of scale existed if expansion took place with the existing set of plants or branch offices, that if expansion just was exogenous.

Q I think you better tell us all what that means.

A It came from—did not occur through the bank expanding via either branching or merging, that if that kind of growth took place, that economies of scale did exist based on your relationship. But if expansion took place via acquisition—either acquisition or via de novo branching, that this tended to offset; in other words, that if you increase—once again—it's a multi-varied analysis in the sense that we consider the joint influences, several different variables. One is output and the other is branching. Branching has positive impact on cost holding other factors constant; increasing output did, but at less than proportionate, indicating economies of scale. So—but if—so—what the study—the results of that study indicates that economies of scale which take place—or expansion [293] that takes place by some means other than—just the business growing—by either acquisition or de novo branching that there is a possible offset. Then it becomes—

Q There are economies of scale in that kind of expansion?

A That is an empirical question. There is a branching offset that is as you increase—you have two effects, the branch effect and the scale effect. One has a positive impact on cost and one has an increase less than proportionate, or a negative increase on average cost. So in any particular situation the impact of expansion by merger depends on the relative magnitudes involved. Now, let me—so—so—let me update that a little bit. Once again you are referring to these studies. There was another—I updated these results with replicated samples for later years, the exact same samples of banks that were used in this early study

and expanded the sample to a nationwide sample. My findings were that in the period from 1965 to 1968 that the magnitude of scale economics was diminished and that we investigated this further and we found that the impact of automation had filtered down to smaller banks and that they are able to increase their productivity in such a way as to have—have an approximate—a flat average cost curve. So that what economies of scale existed in 1965 seemed to have been dissipated or results indicate that somewhat over the 1965 to [294] 1968 period. I have not replicated that study since then.

Q Well, you thought as of whatever date this article was written that economies of scale exist in banking and that increasing the average size of firms within a market area by merger will lower cost which should reduce pricing, right?

[295] A Yeah, you—

Q You thought at the time you wrote this—

A Yes, there's a trade-off, okay. Upon reflection, I think, which would reduce prices.

Q That's what you thought at the time you wrote this article?

A Yes, sir.

Q Now have you changed your mind about that?

A Well, I changed my mind on the basis of the results of further—further work, yes, sir.

Q You have changed your mind?

A Uh-huh.

Q Now, can you tell me—do economists generally agree that—that there are cost advantages in increasing the average size of the firm up to a point?

A Do they—that's an empirical question. I don't know.

Q There's been a lot of work in this empirical area, hasn't there?

A Well, I'm—I think up to a point, yes, but that—yes, but I don't know what that point is in every single industry. But—yeah, I suppose.

Q Well, you also found as of the date that you wrote this article, or co-authored this article that—that a merger [296] which brings about increased concentration tends to bring about higher prices?

A Yes, sir.

Q And have you changed that conclusion in any way?

A No, sir.

Q Now—

A I—results of—as I say, this larger sample, nationwide sample, tend to confirm this—results in this study.

Q Now, does your—you are familiar with the phrase "the market extension merger", are you not?

A Yes, sir.

Q And will you tell me what your understanding of that phrase is?

A Market extension merger is where a bank goes—not—well, a firm enters by merger a market in which it has not operated heretofore.

Q Geographic sideways movement?

A Yes, sir.

Q Something that—right? With the exception of the four-town area that we talked about yesterday, do you regard this proposed consolidation as essentially a market extension merger?

A Well—yes, potential competition, case, yes, sir.

[297] Q Does a market extension merger increase concentration?

A In and of itself?

Q Yes, in and of itself.

A By definition, no, but that's not what we're interested in at this point.

Q Right, but I'm—this is as far as this limited question is concerned, you would agree that this is a market extension merger that we're talking about, and that a market extension merger in and of itself does not increase concentration?

A It increases—decreases the possibility of future deconcentration.

Q Well, potential competition is another question?

A Yes, sir.

Q But as far as the immediate impact on concentration, you agree there is no immediate impact on concentration?

A With the qualification that it reduces future possibility of deconcentration.

Q Doctor Murphy, I don't know whether you were

responsible for the preparation of Plaintiff's Exhibits 64, 67 and 76—

A Are you asking me that question?

Q Yes, I'm asking—

A No, I was not.

Q These are exhibits which were handed to you by the [298] government attorneys. Well—

A I think they were mailed to me.

Q They were mailed to you. All right. Do you know who prepared them?

A I know who is responsible—I don't know who sat down and worked them, calculated—

Q Who do you understand to be responsible?

A My understanding is that Mr. Clark is responsible.

Q Mr. Clark, the attorney for the government, prepared them?

A He mailed them to me, I assume he—

Q Again, I'm not being critical of you, Doctor, but there are a couple of discrepancies in them, and maybe you can explain them, and maybe Mr. Clark should explain them, but P-76 seems to indicate that in 1954 there were 17 banks in the Bridgeport SMSA and P-67 seems to indicate that there are 16.

Now, I assume that you wouldn't know the reason for that difference?

A P-76 as opposed to what?

Q Well, P-67, and—P-67.

A And 67?

Q Yes.

A I don't know—no, I don't.

[299] Q All right.

A Discrepancies, I don't know as of what date the figures are.

Q P-76 also seems to indicate that in the Bridgeport SMSA there's a total of 20 banks in 1954, and P-64 seems to indicate that there were 22. Again, I guess you aren't responsible for that, but—

MR. CLARK: Your Honor, may I just correct Mr. Reycraft, these are banking offices and not banks.

MR. REYCRAFT: This is—you are referring now to 64?

MR. CLARK: Yes.

MR. REYCRAFT: All right.

Q Well, this is not—really doesn't affect your testimony, Doctor. You testified yesterday that you are familiar with situations in other states where savings banks issued new acounts and—which is essentially a checking account, I believe you testified?

A That's my understanding of it, yes.

Q Yes.

MR. REYCRAFT: I'd like to mark for identification as Defendants' Exhibit No. 54 an advertisement which appeared in the Sunday Herald Traveler and Sunday Advertiser on September 10, 1971,—

[300] Q —and ask you whether this is the kind of account that you had in mind?

A Yes, I—yes, sir. It's called the negotiable order of withdrawal.

MR. REYCRAFT: Let me just get this marked so we—

THE WITNESS: Yeah.

(Advertisement was marked Defendants' Exhibit 54 for Identification.)

MR. REYCRAFT: May we mark as Defendants' Exhibit No. 55 an advertisement which appeared in the Herald Traveler and Boston Record-American on September 8, 1972.

THE CLERK: 55?

MR. REYCRAFT: 55, yes.

(Defendants' Exhibit 55 was marked for Identification.)

Q I show you Defendants' Exhibit for Identification No. 55, and I ask you whether this is also the kind of account you had in mind in your testimony yesterday?

MR. CLARK: May I ask, your Honor, that he show these exhibits to counsel for plaintiff? We haven't seen them.

MR. REYCRAFT: Absolutely.

[301] THE COURT: Is there a question pending?

MR. REYCRAFT: No, sir, counsel has asked to look at the documents.

THE COURT: I know, but there's a question pending.

(Question read.)

A Yes.

MR. REYCRAFT: Will you mark as Defendants' Exhibit 56 a two-page document entitled: Bank Notes, Federal Reserve Bank of Boston, Volume 1, No. 24, ending June 9, 1972.

(Defendants' Exhibit 56 was marked for Identification.)

MR. REYCRAFT: I show it to you, Mr. Clark.

Mr. Clark, I'm going to refer to this paragraph.

Q Doctor Murphy, I will show you Defendants' Exhibit 56 for Identification and refer you to a paragraph which is marked and—with a side note, saying: "Bill is signed making Massachusetts first state to grant credit card powers to mutual savings banks". Will you refer to that paragraph?

Are you familiar with this development?

A Well, I read it in the paper.

Q Well, you had no reason to doubt that that's an accurate statement, do you?

A No.

[302] Q The statement is: "A bill authorizing savings banks to issue credit cards signed into law by Lieutenant Governor Donald R. Dwight, making Massachusetts the first state to authorize direct entry into the credit card field by these institutions, the bill was sponsored by the Savings Banks Association of Massachusetts and was opposed by the State Commissioner of Banks, Freda P. Caplo and the Massachusetts Bankers Association."

Have you heard of any development in any other states toward the granting of credit card powers to savings banks?

A Not that I recall. I recently reviewed an article in the Savings Bank Journal discussing legislative developments. I am familiar with the situation in the State of Maine. I testified as an expert witness before their legislative research committee on that matter.

Q On that matter?

A Yes, sir.

Q And what was the nature of your testimony?

A Well, the nature of my testimony was essentially to —well, it wasn't to—not necessarily testify direct—directly on that issue, but to explain the contents of the report of the Presidential Commission on Financial Structure and Regulations.

Q What did you say about that report to the—to the [303] hearing? In a summary, I don't want you—

A It took me an hour and a half of testimony.

Q Would you give me a very brief capsule?

A I don't know if I could, I generally—I explained the report and I will just have to go through and explain the report.

Q Did you—did you take the position in your testimony that this was a desirable development?

A Some parts of the report, yes. Some are relevant—some are irrelevant to—some things in the State of Maine has no control over, some they do.

THE COURT: I'm not sure I know what we're talking about. Are we talking about credit reports or the report of this commission?

Q You are referring now to—

A You said developments, I assumed you meant the—all the developments that you just introduced, that is: credit cards and demand deposits.

Q Right. Did your testimony relate to demand deposits—

A Yes.

Q —powers of savings banks?

A Demand deposit powers, yes.

Q Did you make any recommendation or take any position on the desirability of that—that power being held by savings [304] banks?

A I took the position that the appropriate way to approach the question was to consider the various powers of savings banks and not just one. My feeling is that savings banks are—it is questionable as to whether they have the overall capability to offer this service on a profitable basis and it is questionable as to whether if they do issue demand deposits, whether they—which would be the same as commercial banks, that—whether they would operate

under the same kinds of rules. So that one has to consider the whole picture when making adjustments.

The essence of the Hunt Commission report is that you have to study the entire system and not just change one part of it.

Q Who asked you to testify at that hearing?

A The bank commissioner.

Q Who?

A The commissioner of banks, this was the State of Maine, Robert Brown requested that I testify.

Q Doctor Murphy, yesterday you testified that one of the principal measurements of the likelihood of entry into a market was the size of the potential entrants, is that correct?

A Yes.

Q Would you consider that the larger a bank gets, the more likely it is to become an entrant into a new market? [305] A Along with a consideration of its expansion history, expansion—

Q Do you consider geographic proximity to have any relevance to the likeliness of entry?

A I think that would—that's not clear. I don't know. I think the legal capability and expansion history and size are the most relevant factors.

Q In your opinion, if the Connecticut National Bank and First New Haven National Bank should consolidate, would that make them a more likely entrant into Hartford than either of them is now independently?

A I—I'm not sure about that, no. They'll be larger, obviously.

Q Doesn't that follow logically from the test you used?

A Yeah, there'll be one less, though. There'll be one less potential.

Q The question I asked you is whether the consolidation of Connecticut National Bank and First New Haven National Bank will make them combined a more likely entrant into Hartford than either of them is now?

A Perhaps.

Q Doesn't it follow logically from the standard that you said it would?

A Well, we said—well, the standard is—yes, one [306] of size, but once again, this is the notion—is one of a tendency, and it is a general approach. What we found in the analysis was that there was a break between tenth and eleventh in terms of their—both size and expansion capability. I don't know that —

Q So you would say, then, that any of the top ten banks are equally likely entrants into other markets in the state?

A No, I think it would depend on a lot of other factors, their expressed interest.

THE COURT: Doctor, if they did enter the Hartford area, would they be a more effective entrant than either one of the two defendants trying to go in there separately?

THE WITNESS: I don't think so.

Q You don't think so?

A No, I think they would—they would enter the market with—well, either would enter the market with a full range of services.

Q Well, Doctor, yesterday you made a good deal in your testimony of the importance in your view of relying upon objective evidence and disregarding subjective evidence, am I correct about that?

A In general, yes, sir.

Q You just—you just said that one of the things that [307] you would take into consideration is the expressed intent of the banks?

A Well, I think if—it would depend on what they expressed. If they expressed an interest to enter, I might consider it. If they said they wouldn't, I don't think I would.

Q You'd only believe them if they said what you wanted to hear?

A I don't know if I want to go so far as to say that. I think—okay. Expressed interest in terms of filing an application. That's objective, more objective than just an intention. Just a stated intention, I'm sorry.

Q Well, if you disregard any subjective evidence—

and I understood you yesterday to say that meant any expression of intent, but let's put that aside for the moment—if you limit yourself to the objective evidence of the kind that you referred to yesterday, isn't it a fact that a bank with a—total assets of 750 to 800 million dollars, would be a more likely entrant into Hartford than would a bank with 400 or 350?

A I'm not sure that that follows.

Q Well, then, does it follow that size is relevant in determining who is the most likely entrant?

A Yes, it does. But within—within the—within those ten, it is a matter of—of considering that all are [308] potential, with some degree of variation, depending on various factors, we're just interested in a general tendency in maintaining a number of potential entrants.

Q Well, I'm trying to—to follow along with you in —in—in figuring out what is objective evidence, but it seems to me that you are subjectively telling me what's subjective.

A I guess it depends on what you mean by objective evidence. It is interpretation of the numbers.

Q What do you mean by objective evidence?

A Well, I mean by objective evidence the information that I stated. The expansion history, which is documented, as well as the size, which is documented, along with—in this case—when I—when I meant intend—that's documented to the point of making investment and the time and effort to—to file a branch application.

Q All right. Do you have any opinion as to whether the consolidated bank would be a more likely entrant into the New London SMSA than either is independently?

A I have no opinion.

Q You have no opinion about that?

A I don't think it would make that much difference. Both banks have the capability and the size.

Q Well, for—for how long, if you know, has Connecticut National had the legal capacity and the capability of entering [309] New London?

A I'm not—I don't know the status of the home office protection situation in New London.

Q Do you know whether there is any home office protection in New London now?

A I don't know that, I would have to know that to know—I mean if it's completely closed, that would—would be different than whether there was some open towns.

Q Would you consider the fact that a town was closed under Connecticut state law to de novo branching to be objective or subjective evidence?

A I consider that to be objective.

Q And would you consider that relevant to the question of whether a bank was likely to enter a closed town?

A Well, I think it is objective evidence, however, there are alternative methods of entry.

Q I believe you testified about those yesterday?

A Yes, sir.

Q Do you know how long—or do you know what the status of home office protection is in Hartford?

A I believe that the City of Hartford is closed.

Q And would you think that is an objective factor to be considered in whether either bank or both of them are likely entrants into that area?

[310] A It's an objective fact, as I indicated before, there are alternative means, and there are alternative—the market area has maybe differential growth patterns, the market areas—various places within the market area where they could locate, I don't know—I'm not familiar with the population trends in Hartford as compared to New Haven and Stamford.

Q You haven't made any study—

A No, sir.

Q —of the Hartford population? Do you know whether—whether the City of Hartford is closed to de novo branching?

A I think it is. That's my recollection.

Q Do you know whether the entire Hartford SMSA is closed to de novo branching?

A I don't know, no, sir.

Q All right. Yesterday you testified that Connecticut National Bank could, in your view, enter the New Haven SMSA, do you remember that?

A Yes, sir.

Q And you know, of course, that the City of New Haven is a closed town under Connecticut law?

A It is, but we indicated before that there are other towns which may be more desirable in terms of population trends.

Q All right. But you agree with me that the City of New Haven is a closed town under Connecticut law?

[311] A Yes, sir.

Q You indicated, nevertheless, that you thought there were—I believe I think you said with—with three toehold acquisitions that Connecticut National might make in the New Haven SMSA, which I inferred you believed would make them an effective competitor in that SMSA, am I correct about that?

A I don't know—I don't remember the number, but there were some number of toehold acquisitions.

Q There were some toehold acquisitions, right?

A Right.

Q Can you tell me what they are?

A Let me check the—

Q Take your time.

A Well, of the—Exhibit 68 shows several banks with —with small market shares. North Haven National, Woodbridge Community Banking Company and Hamden National.

Q All right. Do you think—do you consider the Woodbridge Bank to be a—a reasonable toehold acquisition in the New Haven SMSA for Connecticut National Bank?

A Yes. It is a bank that exists within the SMSA and has a small market share.

Q What are the assets of that bank?

A What was the—which one, Woodbridge?

Q Woodbridge, yes. Woodbridge.

[312] A 6.9 million, estimate, SMSA deposits.

Q Have you ever been in Woodbridge, Doctor?

A No, sir.

Q Do you know what the population of Woodbridge is?

A Not offhand. I can check it on the exhibits here.

Q Why don't you do that?

A 7600. 7673.

Q Well, do you—and you think—you think that the acquisition of a Woodbridge bank would give Connecticut National Bank reasonable entry into the New Haven SMSA?

A They would be in the New Haven SMSA, yes.

Q Well, I'll agree to that. Do you—are you familiar with the downtown area of New Haven?

A I haven't been there in many—a number of years.

Q Are you familiar—you know where Church Street is, for example?

A No, sir, I went to a couple of Yale football games, and that's it.

Q That makes you an expert. Do you think—if I—I'll tell you that Church Street is one of, if not the, main streets in New Haven. On that assumption, do you think that a bank which wants to establish itself in the New Haven SMSA has to be on Church Street or somewhere around that area in order to be a meaningful entrant?

[313] A No.

Q You don't think in order to service the business of the New Haven area that it needs to be in the downtown business area?

A Well, we see that that area's, as far as its population is concerned—has declined substantially, and that evidently the existing banks have found the outlying areas more attractive, they have established more branches there than they have downtown.

THE COURT: Excuse me. I just want to make sure I understand what's closed and what isn't. The City of New Haven is closed?

MR. REYCRAFT: Is closed, yes, sir.

THE COURT: But the New Haven SMSA?

MR. REYCRAFT: It is a town by town basis, if there's a town in which there is a head office of an existing bank, that is closed—for example, with Woodbridge is clo'—you can't put a new branch in there.

THE COURT: Because of the Woodbridge Bank—

MR. REYCRAFT: You can't put a new branch in there, but you can merge with a Woodbridge bank.

THE COURT: Sometimes when you say New Haven,

I'm not sure if you are talking about the City of New
[314] New Haven—

MR. REYCRAFT: Or the county.

THE COURT: or the entire SMSA. And now I understand with respect to why the Woodbridge bank now becomes important under his theory.

MR. REYCRAFT: I have a map which is marked as Defendants' Exhibit No. 36 which shows the closed towns in the State of Connecticut, and I think it may be helpful to your Honor.

THE COURT: It will be what?

MR. REYCRAFT: D-36.

THE COURT: D-36. Thank you. I'm sorry. You may proceed with your answer. You were talking about whether or not a bank should—to have a meaningful entry in the City of New Haven, it should be on one of the main ateries, in effect, that's what's being talked about.

THE WITNESS: Could you read back the question?

(Question and answer read.)

Q Doctor, you have referred to the fact that the population of downtown New Haven has decreased, and I believe that's what? About 18% over some period of time. Do you have that—

A 19%.

[315] Q Pardon me?

A 19.4% from '50 to '70.

Q From 1950 to 1970?

A '50 to '70, right.

Q That is while—if I recall the exhibits correctly, while the state of the State was experiencing an increase in population growth?

A And the SMSA, and the population—and the rest of the SMSA, outside of the City of New Haven, had a hundred percent increase in growth.

Q What does that fact—that is: the increase in population of New Haven, indicate to you objectively as to how a potential entrant might view the City of New Haven as a desirable place to establish a bank or bank offices?

A The City?

Q Yes, sir.

A Well, it would—at least for retail business, it would mean that—I—I assume he would evaluate it that he would prefer to put the branch out where population is growing.

Q It would suggest, would it not, that it is not a very good place to put a bank office, doesn't it?

A Yeah, as far as retail business is concerned.

Q Well, generally? I mean he—18% population decline in 20 years while the rest of the state is increasing, if you [316] were running a bank and looking at all the objective numbers and not being subjective about it, what would you conclude?

A I think I would—I would think I would agree, yes, sir.

Q You wouldn't put a bank there, would you?

A I don't think so. Following along, unless I had other objective information on which—

Q What kind of other objective information would you look for?

A I'm not quite sure.

Q You testified, also, I believe, that one of the other toehold possibilities in the New Haven SMSA was North Branford, was it? Or North Haven?

A North—yeah, both.

Q Both?

A Yeah.

Q There are toehold acquisition possibilities in—both North Haven and North Branford, right?

A Community Banking Company of North Branford with a share—2% of deposits, and North Haven National Bank with 1.30%.

Q And those two, plus Woodbridge, make the three possible toehold acquisitions—

A And Hamden, also.

Q Okay. So there are four?

[317] A Yes, sir.

Q Four? All right. Now—

THE COURT: Excuse me. I see, Hamden is not a closed town, right?

MR. REYCRAFT: Well, yes, sir, it is a closed town,

your Honor, and the only way to go into that town by—by another bank is merger, he's suggesting, if I may say so, that a toehold acquisition would be a preferable way to go, so if you can go in by acquiring a small bank—

THE COURT: We're talking about acquisitions now?

MR. REYCRAFT: Yes, sir, not by new branches.

THE COURT: All right.

Q All right. Let's start with North Branford. Is it your view that—that the acquisition by Connecticut National Bank of—whatever the name of the bank it is in North Branford—would be an effective way to enter the—what you have described as the market consisting of the New Haven SMSA?

A I would think so, yes, sir.

Q You would think so?

A Yes, sir.

Q Have you ever been in North Branford?

A No, but I see the population more than doubled, and it could grow by an order of almost five, more than five.

[318] Q What's the total population now?

A 10,778.

Q As of what? 1970?

A Yes.

Q Well, is it your opinion that—that having a bank office in North Branford would enable a bank to effectively service the business community in downtown New Haven?

A The business community in downtown New Haven?

Q Yes, sir.

A I'm not quite sure what the distances involved are.

Q Well, I don't want to—I'll show—this is the map that I have been referring to. Here's North Branford, here's New Haven, and here's Woodbridge, here's North Haven, here's Hamden, Seymour. This doesn't market—out the SMSA, but I think we have another exhibit which does.

A Fine.

Q So here's North Branford and here's New Haven. So let—I ask you again, is it your opinion—that—that Connecticut National's acquiring a bank in North Bran-

ford would enable it to effectively service the business community in downtown New Haven?

A Yes.

Q You think so?

A Yes.

[319] Q How—how any better—let me show you where Bridgeport is. Here's Bridgeport. Now, how much closer would North Branford get—get Connecticut National Bank to New Haven than it is now? Here's Milford—let me show you—Milford and Orange.

A Well, Orange is close.

Q Closer than North Branford, right? And so is Milford, isn't it? About the same, at least?

A It would appear so, yes, sir.

Q How about Ansonia and Derby, both closer than North Branford, aren't they?

A Yes.

Q How about North Haven?

A North Haven looks quite close. I don't know where the town ends and—

Q The map doesn't show that.

A You will recall that we intended that there was some—some difficulty in determining what that four-town area—

Q Yes, I do recall that.

A If we counted in—well, never mind.

Q Well, okay. If I—if I understand you correctly, then, you think that the acquisition by Connecticut National of the North Branford bank would enable it to make an effective entry into the New Haven SMSA and effectively service the business [320] community of the City of New Haven?

A I'm not sure about the—yeah, I think it would be able to service the business community and more—it would be able to service the individuals in households effectively. We have seen the patterns of intra-SMSA commuting and business patterns that indicates that they could serve adjacent towns effectively from that—from that location.

Q Okay. I have to say that I would be surprised if businessmen from downtown New Haven would drive out to North Branford to get there needs serviced. I mean

you testified about the importance of convenience to customers.

A I think it would depend on the—on the situation. I don't know that—

Q You wouldn't expect them to do that ordinarily, would you?

A The businessman?

Q Yes, sir.

A I think he could find within the SMSA—it depends upon the kind of services.

Q Well, as far as a businessman is concerned, isn't the number of miles he has to drive more important than whether he is crossing an SMSA line or not?

A Yeah, I would—offhand, yes.

Q Well, I really don't know how many miles there are [321] between—downtown New Haven and North Branford, but it might be ten or fifteen, I don't know. But—but you think the businessman would be—would be willing to get—drive that far to get his business needs serviced?

A I don't know if he would be willing to drive that far every day, I think—I think it would be much more effective—if we're talking about entering the New Haven —I think that that area would be certainly desirable for retail business and perhaps somewhat less desirable for business customers downtown. I don't know what the business population in the City of New Haven, Woodbridge or—that—I'm sure there are business there, also.

Q Well, I think you will find that Woodbridge is largely a residential area.

A Woodbridge or North Haven, which—

Q North Branford, we're talking about.

A Or North Branford, yes. I assume there are businesses even though it is residential, I assume there are grocery stores.

Q You think that the North Branford acquisition would enable the acquiring bank to service the business community of North Branford, just as I assume the existing bank now does?

A Yes, sir.

Q And do I understand you also to be testifying

that you think that New Haven businessmen would drive from downtown [322] New Haven down to North Branford to get service?

A I think that they—if—depending on the deal that they would get.

Q So you think businessmen will travel a fair amount of distance to get a good deal?

A Well, I think this depends on the size of the business and the type of business.

Q Well, how big a deal do you think it would take to get somebody to drive from downtown New Haven out to North Branford?

A I really don't know what the numbers would be, sir, exactly.

Q Well, yesterday we talked about loans in the amount of $25,000.00, and do you—I thought—I thought you said that you didn't think a businessman would go very far to make such a loan?

A I think he'd stay within his own metropolitan area.

Q But you think he might drive from New Haven out to North Branford for that?

A Especially if he lived in North Branford.

Q Suppose he doesn't? Suppose he lives in Orange?

A Then he—if he—I assume if he—he's a businessman and he doesn't live in downtown New Haven because people have been leaving that area, and that he commutes to work, and commuting patterns like other people—would have [323] some effect on his alternatives, sufficient—as long as a sufficient number of people living around the area—

THE COURT: May I ask you this: when you say 19% decrease, that's in population?

THE WITNESS: Yes, sir.

THE COURT: Well, do we have any statistics on whether business establishments have increased or decreased? In other words, the businessman may move from New Haven for one reason or another, to Orange or North Branford or East Haven, but may open up four more stores in the center of New Haven as part of his business, so isn't that a factor—I mean you are talking about population movement, and on the other hand you are talking about businessmen.

MR. REYCRAFT: I think business movement is relevant, also, yes, sir.

THE COURT: So what difference does it make if the businessman moves out of New Haven if he keeps his business in New Haven? Isn't it more likely that the businessman would transact business closer to his business rather than his home, unless there was a special deal and he knew the banker or something?

MR. REYCRAFT: I think so myself, your Honor, I [324] think that a New Haven businessman's going to do his banking business in downtown New Haven and not drive out to North Branford or drive out to Woodbridge to do it, that doesn't seem very realistic to me, that's my view.

THE COURT: Is that one of the points here that you are trying to make?

MR. REYCRAFT: Well, my argument, your Honor, as I understand the plaintiff's position, it is that Connecticut National Bank, if it acquires a bank in North Branford or in Woodbridge, is going to be able to service those businessmen whose—who have businesses in downtown New Haven. Well, I find that a little hard to accept in that I don't think very many businessmen are going to drive—who have businesses in the City of New Haven—are going to drive out to Woodbridge, you know, which is a lovely place and all that, or North Branford and do—do their business.

THE COURT: I understand that, of course, but the 19% is what I was trying to tie down. That's a population decrease?

MR. REYCRAFT: Yes, sir.

THE COURT: It is not business population. Not [325] necessarily a decrease in the amount of firms doing business in the City of New Haven?

MR. REYCRAFT: That's right, sir.

THE COURT: There hasn't been a 19% decrease there? Or we don't know what the figures are?

MR. REYCRAFT: I don't know, sir, I don't know.

THE COURT: Very well, you may proceed.

Q Doctor Murphy, let's turn to the—to the Hartford area. Is it your opinion that Connecticut National

Bank or the First New Haven National Bank could make an effective entry into the Hartford SMSA by acquiring a bank which is not in the City of Hartford?

A I assume they could, yes, sir.

Q You think they could?

A Yeah. Once again, I'm not as familiar with—I think in the case of—the population we have seen with respect to these two SMSA's indicates that the outlying areas are, indeed, desirable locations. I don't have similar detailed knowledge regarding the Hartford SMSA.

Q Well, again—

A But once again, considering that it is an SMSA with certain—the conceptual framework or guide lines for establishing an SMSA would indicate that there are commuting patterns within the area and I would—on the basis of—well, not [326] having other information, that information would lead me to believe that it is an integrated economic area and that one could locate in various places within the SMSA and be an effective competitor.

Q Well, again assume, as I think the Court has correctly pointed out, that population movements may be different from business, movements of businesses, and that there are many businesses, I think we could both agree located or headquartered in the City of Hartford, don't you really think that in order to effectively service those businesses that a bank would have to have offices in the city itself?

A I think it would be—it would be easier. I don't know if it is necessarily true that it would be impossible for it to effectively serve outside. To effectively compete from an abutting suburb.

THE COURT: Another point I may be missing here is this: when a bank that wishes to open a branch in a town that's closed, if it acquires the home office bank that's there, how does that help anyone? I mean it is just substituting one bank for another. Where's the increased competition? Now, if we didn't have this home office business, and Bank A is located in the Town of Woodbridge, and then Bank B comes into the Town of Woodbridge, and Bank C, you can see the [327] com-

petition start to develop, and even in a small town, for the business activity and for the residential—the residents there, right?

MR. REYCRAFT: Yes, sir.

THE COURT: All right. But when one bank comes in and takes over the home office of another bank, which for all intents and purposes puts that particular bank out of business if its home office is gone, how does that help competition?

MR. CLARK: May I respond, your Honor?

MR. REYCRAFT: I was about to respond by saying my understanding of the government's position is they argue that one should enter a new area by making what they call a toehold acquisition, which is a small bank, and them presumably get bigger and do it that way. I don't mind if Mr. Clark speaks for himself on this point.

THE COURT: I hope you don't mind these interruptions.

MR. REYCRAFT: It is helpful for us to know what the problems are.

MR. CLARK: Mr. Reycraft has stated a premise, and that is that if a potential entrant, a significant potential entrant chooses to enter a market by means [328] of acquiring what has heretofore been a relatively insignificant competitor, one that does not have a large market share and presumably has not had much of an impact on competition in the market, if this potential entrant—let us assume that it is Connecticut National Bank—should acquire the Woodbridge Bank and Trust, Connecticut National Bank with all of its resources and its aggressiveness that it's shown is now substituted for this small and heretofore ineffectual bank, we can assume—or it is the government's contention that this would be pro-competitive. By—that this substitution would be but while there—they're obvious—location one suburb may not be totally able to serve the SMSA, this at least would be a start.

THE COURT: I hope you don't mind these interruptions, but I can at least see the theory, but sitting here my first blush reaction is: so you substitute CNB for

Woodbridge, there's still one bank there and where's the increased competition?

MR. REYCRAFT: I don't wholly subscribe to the government's theory.

THE COURT: You may or may not. I just wanted to understand how the substitution of names can have [329] an effect, and now I understand the theory behind that.

Incidentally, do you agree as an expert that that probably will happen? When a bigger bank comes in and acquires a small—

THE WITNESS: Yes, sir.

THE COURT: —home town—home office bank, that despite the fact that they'll probably be in the same building, that competition from your experience and knowledge probably will increase? Do you subscribe to the theory put forth by Mr. Clark, let me put it that way?

THE WITNESS: Yes, sir. Could I clarify that a little more, the government—our position is that when considering that method of entry compared to acquiring the largest bank, and it is preferable to acquire a bank that has a small market share than to the—to the larger market—the bank with the largest market share in the area.

THE COURT: Would your theories change with respect to what a bank should or should not do in the case of CNB if you learned that the banks that were subject to being acquired refused to be acquired?

THE WITNESS: I don't know, sir.

[330] THE COURT: You said one thing CNB could do is just acquire the Woodbridge Bank, the North Branford Bank, the North Haven Bank or the Hamden Bank. What if they don't want to be acquired? Regardless of the benefits that stockholders—or depending on what type of bank it is, depending—regardless of the benefits, what if they don't want to be acquired? Would that influence your thinking at all in the particular case?

THE WITNESS: No. I assume that there would be significant enough probability that one of the four would be able to negotiate an acceptable arrangement.

THE COURT: Right. Thank you. Go ahead.

Q If one of these four banks just been referred to has refused to be acquired, would you consider that an objective fact, objective evidence?

A Well, they could change their mind.

Q But at the time it is certainly objective, isn't it?

A That's a stated intention.

Q Well, it's a fact, if they refused, it is a fact, right?

A Yeah.

Q Now, on the—assuming that Connecticut National did [331] acquire the North Branford bank, would that merged bank be able to branch out into North Haven?

A I don't have the—

Q Well, let me show you the map again which shows the closed town—I just suggest to you, because I'm not trying to trick you, that black is the closed areas, and I think you might find there's a bank with a head office in North Haven.

A Yes, but that bank may not have that head office forever. I mean some of these towns are closed and opened depending on whether the—whether the last home office is acquired. For example, these towns open and close from time to time.

Q Assuming that D-36 is accurate at the present time, and I have burden of showing that in our case, but assuming that that's accurate at the present time, a North Branford bank which is acquired by CNB could not branch into North Haven, Hamden, New Haven, Woodbridge, Orange or Seymour, is that right?

A That's correct.

Q And if CNB acquired the Woodbridge bank, that bank could not branch into Seymour, Hamden, New Haven, Orange, North Haven or North Branford, right?

A That's correct.

Q And similarly, if either North Haven or Hamden bank [332] were acquired, it could not branch at the present time into any other of these areas which are colored black in D-36?

A Yeah, that's correct. But there are other areas in the SMSA, and as I indicated before, some of these towns may not be closed forever. They can be opened.

THE COURT: May I ask this as a follow-up on these questions. If a bank acquires—let's just take the North Branford bank—it no longer—well, let me ask you: where is the resulting bank's home office?

MR. REYCRAFT: It would—in this case, would undoubtedly still be in Bridgeport. It has a choice.

THE COURT: And the North Branford bank no longer is a head office?

MR. REYCRAFT: Right.

THE COURT: So wouldn't that open a closed town? Just for example, Mr. Reycraft, just for example, if Bridgeport—I'm sorry—CNB goes in and buys the North Branford bank, wouldn't that open a closed town as a practical matter?

MR. REYCRAFT: If there is no other bank with a head office in North Branford. I don't know whether there is or not. Assuming there wasn't, if that was the only bank with a head office in North Branford, [333] I think it is, then it would open the town, other banks could come in and open branches there and that has some pro-competitive consequence.

THE COURT: And in this case, if the merger were approved, where would the home office be? Have you decided that yet?

MR. REYCRAFT: Well, it would be in Bridgeport, your Honor, but it would not open—if your Honor's question is—it would not open New Haven because there are other banks with home office protection in New Haven.

THE COURT: I know that, and it certainly wouldn't open Bridgeport, either.

MR. REYCRAFT: No, sir.

THE COURT: I think I'll give the court reporter his midmorning recess and we'll take a five-minute recess.

(Recess taken.)

[334] Q Dr. Murphy, have you given any consideration to the problems involved in Connecticut National Bank entering the city of New Haven by chartering a—by applying for a charter for a new bank, forming a holding company and making a holding company acquisition of that new bank?

A Have I considered the problems involved?

Q Yes, sir.

A Do I know the procedures? I know the procedures. I assume those are the problems.

Q Well, in the terms that you have used, there are some barriers to entry into the city of New Haven, are there not? And some of those barriers are legal barriers, are they not?

A Yes, sir.

Q One of these barriers to entry is the closed-town protection, right?

A Right.

Q Now, if you—or if the Government is correct, this is really not your responsibility. If the Government is correct that one of the regulatory authorities would grant a new charter to a—to CNB after it formed a holding company, then that is another legal obstacle, is it not? The obtaining of the regulatory approval for the new charter?

A Yes, sir.

Q Then it would be also necessary, would it not, to [335] apply to the Reserve Bank to form a holding company under the Holding Company Act?

A Yes.

Q And that is another legal barrier to entry, isn't it?

A Yes, it's legal, but I—if you look at the—you know —the number of holding companies that have been formed would indicate that it doesn't seem to stop anybody, very many people.

Q Has anybody in Connecticut ever done that?

A Established a de novo bank?

Q Has any bank in Connecticut formed a bank holding company under the Federal Bank Holding Company Act, applied for a newly chartered bank in another area and acquired that newly chartered bank and entered what would otherwise be a closed-town by that method?

A Not to my knowledge, no sir.

Q So that at least up to the present time that has been something of a barrier to entry in Connecticut, has it not?

A You mean the capability to establish a new bank is a barrier?

Q Yes.

A I consider it to be a—the capability or the fact that regulatory approval is needed? If they have the capability that doesn't appear to me to be a barrier.

[336] Q Well, you don't regard the necessity of getting these two regulatory approvals as being any barrier?

A Well, the—getting the approvals can be a barrier, yes.

Q Well, it would require at least two regulatory approvals?

A Yes. My interpretation of the Federal Reserve Board's decisions in this is that regulatory approval nor this kind of acquisition wouldn't be—would normally be approved.

Q Do you have any knowledge or any opinion as to how much of an investment would be required for a holding company to enter downtown New Haven by forming a newly chartered bank and a holding company and acquiring that bank?

A No, I don't.

Q You have not made any study of that at all?

A No, I don't.

Q And if—if objectively it turned out—you may not agree with this—that in order to be an effective entrant into New Haven SMSA a bank needed an office on Church Street, you wouldn't have any knowledge or information as to what kind of investment would be required for that entry?

A No. I would be interested in comparing it to the cost of this litigation.

Q Do you know whether the Connecticut Bank & Trust

[337] Company has entered the New Haven SMSA?

A Let me consult P-68. Yes.

Q How did it do so?

A They acquired Tradesmens National Bank of New Haven.

Q And where are its offices located?

A I don't—I am not—don't know for sure.

Q Do you know whether Connecticut Bank & Trust Company now has an office on Church Street?

A No, I don't.

Q Do you know whether Hartford National Bank has entered the city of New Haven area?

A I don't know if they're there. Hartford National Bank acquired General Bank & Trust Company and they are in the SMSA. I am not sure exactly where in the SMSA.

Q You don't know whether they are in downtown New Haven or not?

A I don't recall, no, sir.

Q If I—I believe you would find that they are in the downtown area. Do you have any opinion as to why they entered by acquiring banks in the downtown area rather than Woodbridge or North Branford?

A My opinion would be that they thought it was a better investment.

Q Do you have any opinion as to whether—whether it [338] might have been relationship to their ability to effectively serve their customers?

A I would assume that would be one of their criteria.

Q Are you—you are aware of the fact that the Second National Bank is now—a New Haven headquartered bank?

A Yes, sir.

Q In your opinion would that be a reasonable acquisition for a new entrant bank to make?

A I am not—let me check that. It's one of the ten largest. I would—I would think it would have serious anti-competitive effect on basis of, you know, potential competition.

Q Because of its size?

A Yes, sir.

Q Do you have an opinion as to whether a—a customer residing in North Branford might drive to Woodbridge to have his business serviced?

A I assume if he—you mean a business firm?

Q Yes.

A Or an individual?

Q Let's start with a business firm.

A I think it would depend on his normal pattern as we indicated before of commuting which would define his alternatives. We have to—we are not contending or it's not my opinion that a toehold entry permits future expan-

sion, and that's just what [339] it was. It's gaining a foothold in order to establish branches, also where to make other acquisitions, perhaps within the SMSA that might—we just can't—I am not willing to state that they are confined once in the SMSA area and that area forever. I think that once they're in an aggressive, competitive bank can change its—not change its location but can establish facilities in other locations, depending on where towns open or close, closed towns may open.

Q I think we agreed before the recess that a—the acquisition of a bank in Woodbridge would not enable the acquiring bank to branch into any of these other closed towns in the New Haven SMSA which are indicated on P-36, is that right?

A Does Woodbridge have any branches in any of these other towns?

Q It's a single branch bank.

A I think North Branford might, I am not sure, some of these acquisitions might have other branches in the parts of the SMSA.

Q If the acquired bank has a branch in some other town which is now a closed town for some historical reason, it could retain that branch, is that right?

A Yes.

Q Could it add any new branches, according to our understanding, in a closed town?

[340] A No, as long as it was closed.

Q Right. So that—so the acquisition of a Woodbridge bank would not enable that bank to branch throughout the closed town area of the SMSA under the existing set of decisions.

A They could establish branches within the town of Woodbridge which abuts New Haven. I can't tell by the black, but I asume it does.

Q It does.

A They could put a branch as close to New Haven as is physically possible.

Q Now, I think you have already said that you have not made any—any study of the Hartford area, but do you have a list of the banks which you might think suitable for toehold acquisitions outside the city of Hartford?

A I have a list of banks within the SMSA. I am not sure where they are located within the SMSA.

Q You would not be prepared to contend that any particular one of them would be a good toehold acquisition?

A I think if they are in the SMSA they have—

Q Well, all right, if you think any bank in the SMSA would be—if it meets your, as I say, criteria, it would be a satisfactory toehold acquisition. Then I will accept that. Is that your view?

A Well, obviously so—some locations are going to be [341] better than others, but I think that there is sufficient evidence that shows that population trends and commuting trends and other factors, economic factors in the area make it possible to be an effective competitor along with the understanding that growth may take place in the future as towns open or as other acquisitions might occur—other smaller acquisitions.

[342] Q Do you have an opinion as to what population per office is necessary to support a bank branch?

A No.

Q I recognize that that would vary in different areas depending on income and other factors?

A Yes, sir.

Q Are there generally accepted populated criteria which are used by the regulatory agencies?

A Yes, the regulatory agencies do apply these. I'm not sure what the numbers are offhand.

Q Can you give me a range, and I am not going to hold you to it exactly?

A I think there's wide variation around the country. We conducted studies on this and I just frankly don't remember the numbers. I might add—I might indicate that technical change may reduce this in the sense that facilities can be made quite small with minimal investment in terms of some of these smaller mini-branches and teller facilities that can be—you can bring the size of a branch down pretty far now-a-days because of technology.

Q All right. But you do know that there are population criteria applied by the regulatory agencies when they pass upon a new branch site, new bank office site?

A Yes, sir.

[343] Q Are you—

A I think that's one of the large number of factors that they consider.

Q Well, it's a factor, isn't it, if they don't meet minimum standard, they don't get approved, if there's not enough population to support the branch, it's not going to be approved?

A Well, I—that—we weren't involved directly in that in my activities.

Q You mean the FDIC?

A Yes, sir. I think, as a matter of fact, they were more interested in the capital position of the bank.

Q You mean they didn't care what the population was?

A Yeah, I think they care, but they were more interested in how much risk the—the differential capital positions—in one case they might permit a branch, and in another case they might not, even in the same area.

Q Are you familiar with what the general capital criteria are which are applied by the Federal regulatory agencies, Comptroller of the Currency office, for example?

A I'm general—more familiar with FDIC than the board of governors.

Q What capital does the FDIC require in relation to total deposits?

[344] A There's no—the FDIC says there's no general figure, as I recall, that they consider such things as the risk and the loan portfolios, the quality of the asset portfolio, and the level of deposits in determining that, the Federal Reserve has a formula which includes rates assets by their expected loss potential and comes out with a needed amount of capital. This is the general procedure.

Q And doesn't it happen from time to time that the regulatory agencies decline to approve branches because of an unsatisfactory capital position?

A Well, they may—they may ask them to raise more capital.

Q And that does happen from time to time?

A Yes, sir.

Q Are you aware of any recent announcements by the State Superintendent of Banking, Connecticut, concerning new branches?

A No, I'm not.

Q We have already marked for identification as Defendants' Exhibit D-51 a one-page document dated September 29, 1972 by James E. Hagan, Bank Commissioner of the State of Connecticut.

Doctor Murphy, I show you D Exhibit 1, and I will ask you to take a few seconds to read it.

[345] A Yes.

Q What—what does that indicate to you?

A It indicates to me the commissioner has—probably doesn't have sufficient staff to process the applications.

Q Does it say that?

A I believe it does.

Q What does it say that?

A It says: "Due to the substantial backlog, because of the numberous branch applications being filed with the Connecticut Banking Department and the substantial backlog of unprocessed bank branch applications, it is deemed expedient to impose a moratorium for six months on filing branch applications."

Q So there is at the present time a six-month moratorium on the filing of branch applications?

A I don't know if that—could I see the date on that?

Q September 29 of 1972.

A I see, so there's five and a half months—almost six months, yes.

Q You weren't familiar with the fact that this moratorium was in effect, so I assume you don't know the reasons of your own personal knowledge?

A All I know is what I read on the document that you just showed me.

[346] Q You testified yesterday, Doctor Murphy, in relation to how you generally go about as an economist in measuring competition and the benefits of competition and you said that—that you—the performance in terms of competitive markets is usually described in terms of the price of the particular good or services being sold, in terms of the desired quantities as opposed to what's actually produced and in terms of the quality of the particular products, and that's at Page 139.

Would I be correct in understanding from that—that the particular product is what you analyze, rather than

whether a number of products are sold by a particular store, for example?

A Well, this—it is an empirical question, as to how you would actually define the product. I mean—

Q What are the products which banks sell?

A Well, they—they're in defendants' exhibits in terms of the kind of activities which they—

Q There's a range of products, is there not?

A Yes, sir. Yes, sir.

Q Banks are described sometimes as department stores of finance?

A Uh-huh.

Q And you are familiar with those more than I am. But—but there are a number of individual products which they sell, are there not?

[347] A Yes.

Q And one way of analyzing the competitive market if—according to your testimony is to—is to analyze each of those products in terms of what's actually produced and what's available from other sources, is that right?

A That's correct, yes. I don't—yeah.

Q I mean, for example, just to come out with it, if—if a product—one product is being sold by a commercial bank and the same product is being sold by a savings bank, you would analyze the competitive effects in terms of the availability of that product?

A Well, in general, yes, however, the—we—we have indicated that there are certain benefits to selling this range of products which could cause us some differentiation.

Q Well, you aren't familiar with any market, are you, in which the products are perfectly interchangeable? Isn't it usual in analyzing product markets that there's some qualitative or price differential so that one might have some price advantage over the other, maybe an advantage in one area and a disadvantage in another area, but that doesn't keep them from being in the market for competitive analysis, does it?

A It's a question of degree, yes. The only kinds of markets here are things like organized exchanges or grain markets.

[348] Q They're the only perfect markets, and they're not too perfect, a hundred percent perfect, right?

A No, sir.

Q But other than those markets, exchange type markets, which you testified about yesterday, which may approach this perfection, other markets almost invariably have imperfections in product interchangeability, do they not?

A Yes.

Q That doesn't keep you from analyzing those markets in product terms, does it?

A No.

Q You said, also, that another part of the methodology is to—is geographic delineation, and you said that that is determined by that area in which the decisions as to output and prices are affected by participants in the market, and that's at Page 140?

A Yes.

Q So that the geographic market depends in part upon the pricing decisions which impact that market, is that correct?

A Yeah. In other words, see, we sometimes run into the problem in banking of distinguishing between a service area and a market area, a service area as a mechanical concept defines where the business is—from where the business is [349] derived, some ratio, in other words, where does 75% of your business come from, you draw a circle around it? It doesn't have—by itself, doesn't have any analytical significance.

Q Well, let me ask you whether you have enough information to form a tentative opinion as to what the service area of the Connecticut National Bank is?

A Their service area?

Q Yes, sir.

A I think they have a whole constellation of service areas. We usually think of service areas in terms of individual offices.

Q Is that the way the Federal Reserve Board and the FDIC define service areas?

A I think they define a service area depending on what they look at.

Q Don't they define a service area as a bankwide service area?

A They may.

Q And don't they define it as the area from which 75% of the deposits are derived?

A 75% of the deposits, yes.

Q So—

A That depends on what you are looking at. In a branch application they look for a decision regarding a branch, but [350] they might look at the branch service area and look at the bank, it varies depending on the question involved.

Q Well, you have—you testified that you did a lot of work on bank merger applications, and isn't it a fact that you usually use the bankwide service area?

A Do we ask for it or do we use it?

Q Did you use it in analyzing mergers?

A We looked at it. But we—we didn't consider the service area a market.

Q Well, let me go back to my earlier question, which is: do you have enough information from which you could give me a rough statement as to what you believe the service area of the Connecticut bank is?

A I'm not—no, I don't, at this point, no, I don't remember.

Q Well, would you agree with me—

Q I don't recall it.

Q —generally, at least, it probably coincides with the area within which it has branches?

A Yes.

Q And would you agree that the same thing applies to the First New Haven National Bank?

A I would assume so, yes.

Q I haven't done the arithmetic, and I am not trying to [351] play arithmetic games with you, but I—I think we could probably both agree that—that probably 75% of their deposits come within the rough area of several miles around their service areas. Now, do you—you testified, as I mentioned, earlier, that one of the means used to determine a market, geographically delineated

market, is to find out the area within which decisions as to output and prices are made, right?

A Yes.

Q Do you have any knowledge as to how Connecticut National Bank prices the services and products which it sells through its various offices?

A No.

Q If—if its interest rates charged on consumer loans were uniform throughout that area, would you agree that that is one factor which should be considered as an economist in determining what the market—its market area is?

A Not necessarily.

Q Would you agree as a economist that—that those persons who establish interest rates of this kind in the bank should prudently take into consideration the rates charged by other banks in that service area?

A In the market area.

Q Well, suppose—you had the view, I know, that the Bridgeport SMSA is the market, but suppose that—suppose that [352] a bank in Norwalk had a lower rate on consumer loans and assume also that Connecticut National Bank had some branches around there, do you think it would be prudent for them to take—let's take Fairfield, rather than Norwalk—do you think it would be prudent for Connecticut National to take that into consideration?

A In establishing a system wide policy?

Q Yes.

A Yes, I think so. But I think that they would then be faced with a decision as to whether they would want to lose business—we covered this yesterday. It's a decision which they would have to make to—to determine whether meeting competition down there cost them more in the entire system than it's worth.

Q Right. But they would be subject to the competitive input of a bank which charged a different price in part of their service area, would they not?

A In that part, yes.

Q Well, if you assume that they charge the same for consumer loans throughout their service area, if they

change it in one place, they're going to change it in all places so that competition in one part of the area affects their systemwide pricing, doesn't it?

A I don't know that, but they do.

[353] Q Well, unless,—unless they have area pricing, that would be true, wouldn't it?

A Well, I would—the best decision would be to have areawide pricing.

Q That would be the best decision?

A From a stockholder's point of view.

Q From an economist's point, would that be the best decision?

A No, what we want to do is provide a structure that wouldn't—that would tend to—

Q You would like—you would like, as an economist, would you not, to have a systemwide prices of Connecticut National Bank affected by big risk competitor anywhere in that service area, wouldn't you?

A Anywhere in the market area.

Q In the service area?

A Market area, market area and service area isn't necessarily coterminous.

Q Not necessarily, but they're not necessarily not coterminous, either, are they?

A No.

Q And one of the criteria in determining whether a service area, for example, is a market is whether service area wide pricing is effected by participants in the market, right, [354] that's what you said yesterday?

A I didn't say anything about the—that was a very general statement.

Q Let me quote you.

A Yes, you may quote me, but it is a very general statement at the beginning of the testimony about the nature of competitive markets.

Q Well, you said, quote, "Geographic delineation is determined by that area in which the decisions as to output and prices are affected by participants in the market," close quote. So that in geographic delineating the market, you should take into consideration, should you

not, those—the area within which people make decisions which affect prices and output?

A Well, it is the area which—which affect them, and as I—I went into some detail following that, in more—more—more particularly related to banking markets, that there's customer alternatives that tended to—tended to determine—determine these markets.

Q Well, your testimony rested in part, at least, on the assumption, did it not, that the Connecticut National Bank charged different prices in a different SMSAs in which it—which are in its service area dependent upon the degree of competition it receives in those SMSAs?

A Not necessarily. I think I indicated that there [355] are various methods by which market power may be exploited.

Q But you weren't testifying it was being exploited that way?

A No, and I think I also testified that I would rather have the outcome determined by competitive structure rather than by either the good will or the pricing bad—bad from the—from the stockholders point of view of those kinds of pricing decisions.

Q But if the pricing system is—pricing is uniform throughout the system, and if the pricing decisions are affected by competitors throughout the system, then, shouldn't you as an economist take into account in determining what the market is the service area and the competitors in that service area who affect the pricing decisions?

A No, I don't—the service area concept, as I said, is mechanical and I—I'm interested in the market area.

Q Is—in your opinion, is the Union Trust Company in competition with the Connecticut National Bank?

A Where are its offices located?

Q Well, there are a lot of exhibits around.

MR. REYCRAFT: D-49.

Q Doctor Murphy, I show you D-49, which is a defendants' exhibit, and has yet to be introduced into evidence, and it is entitled: Office Towns, Union Trust Company.

[356] Now, do you need a map on the Connecticut Na-

tional offices? I have that also. That is D-39. Office Town, Connecticut National—

A I don't know if I need it.

Q Well, you might as well have it.

Can you give me an opinion as to whether those two banks are in competition with each other?

A Wait a minute, there is—this is Union Trust, they're in Trumbull.

Q Union Trust.

A They're in Trumbull, right.

Q Yes.

A And Connecticut National Bank is in Trumbull, yes, and some probably down in some of these SMSAs, also, yes, down here in this part of the state.

Q If each of them—if each of them use systemwide pricing, in other words, they charge the system interest rate for consumer loans, the same interest rate for mortgages, the same interest rate—they pay the same interest rate systemwide on savings deposits, they may be different, but each one systemwide charges the same thing, would you say that their competitive conduct, their pricing decisions affects the decisions of the others?

A In the market areas in which they—in which they [357] compete.

Q Well, if they have systemwide pricing, doesn't their actions—wouldn't the action—

A I don't—

Q —one affect the actions of the other system? Why?

A I indicated earlier there are other methods of—I—if you recall the testimony that you are quoting, it says quality of product, also, quality of service can be varied more easily.

Q I agree there are other things, but holding those other things constant, as you have testified—as you sometimes do as economists, wouldn't you agree that if the Union Trust Company changed the rates it charged on consumer loans systemwide, that that would have an impact on what Connecticut National could charge competitively systemwide?

A If they did it systemwide, but once again, we say that—

Q Well, I'm not asking you to testify—
A —holding other things constant—
Q If they do it systemwide, you would agree?
A I don't know—if they—
Q If you disagree—if you disagree—
A As I indicated before, there are alternative methods of—alternative methods of exploiting market power, and [358] there's a multidimensional thing. You kept —you kept quoting me as saying quality, quantity and price, and either of those things can be varied, so to the extent that if they did that, yes, it would be, but then these other dimensions would have to be examined also. But what I—what my—what I am basing my position on and my interpretation of the effect of this proposed consolidation is the general relationship between structure and performance.
Q Well, if the Union Trust Company changes its price systemwide and—as a competitive reaction the Connecticut National Bank has to make some response, isn't that an effect on performance?
A Yes. One dimension of it.
Q It is one dimension?
A Yes.
Q Isn't price one of the most important dimensions of economic performance?
A Depends on the type of the product, but, yes, generally, yes.
Q In—it is always—always an important factor isn't it?
A Yes, yes.
Q And if the other—if the other banks which have offices in the service area which Fairfield—I mean— [359] Connecticut National Bank operates in, make similar pricing decisions, Connecticut National should prudently take them into account competitively, should they not?
A Yes.
Q Even if they're not in the Bridgeport SMSA, right?
A They should in the—in the SMSA in which they operate, yes.
Q And if they do it systemwide, if they have the

same price systemwide, a competitive move by a bank in Norwalk or Wesport or Fairfield should be taken into account systemwide by a Bridgeport bank if it has offices in their areas, right?

A I assume it would look at every market area in which they operate and make decisions that way, yes.

Q So that there is at least some influence on the competitive behavior of the Connecticut National Bank from every bank that operates in its service area, isn't that right?

A Each and every service area.

Q Right. And if its reactions are systemwide, those competitive inputs are going to affect systemwide performance of Connecticut National Bank, are they not?

A Yes.

Q Well, doesn't that indicate to you that—that the service area of a bank has some substantial significance as a market delineator?

[360] A Generally, no. No, as I indicated before, I—I think in terms of markets, in terms of customer alternatives in determining these—the geographic delineation and that a bank can operate in many different markets simultaneously and can operate in many different—the service areas for its different branches, it can operate there, also.

I mean, would you say—for example, we have Connecticut National Bank in Waterbury, I believe, would you then include in drawing around this circle all around the—the Connecticut National Bank system and leave out what's between Waterbury and Bridgeport? Or leave it in the service area?

Q I'll tell you what I think, I think—I think that—that pricing decisions by—by banks in Connecticut are affected by the actions of most other banks in Connecticut. Unless they're up in Thompson, Connecticut, where there's no—maybe there's nobody around.

THE COURT: Just to keep things right, would you like to change places?

MR. REYCRAFT: I was going to decline to answer, but I don't really mind.

(Laughter.)

THE COURT: Well, it is a fact, Doctor Murphy, and I think you haven't really disagreed, that if [361] businessman A meets businessman B and businessman A says to businessman B, "I just left Bank X, and I got a loan of $20,000.00 at 6.5%," and businessman B says, "My goodness, my bank always charged me 7, and my business is the same as yours," isn't it likely that businessman A will say, "Go over and see my banker, Mr. Jones, and I will introduce you to him," and businessman B sure will take a careful look at businessman A's bank.

Now, true quality may enter, sure, I'll admit that, and sometimes the personality may affect many people. I mean, people will say, "I like this other bank, people there are nice." But businessmen as a general rule—I think that's the level we're on—they like to go where the best deals are. Wouldn't businessman B's bank say, "We lost eight customer loans last month to bank B, maybe we better sit down and review why we lost six or eight of our very good accounts"?

I mean, isn't that on a practical level what happens?

THE WITNESS: I'm not sure how much information businessmen make available to each other on their financial affairs. The businessman's relationship [362] is generally considered a confidential one.

THE COURT: Doesn't the word kind of get around in a community that bank A—let's get off the commercial banks and get to maybe the savings banks. Bank A will give you a little better mortgage than bank B, don't banks gain reputation in the community that they operate in, and, therefore, wouldn't one bank's board be quite anxious to know why it is losing customers, or why it is gaining customers? And if they find that they're losing customers due to a teller's window, for example, and the other bank doesn't, they start to at least consider—put in a teller's window, don't you think so?

THE WITNESS: Yes, sir.

Q Doctor Murphy, you also testified yesterday that when you think in terms of the competitive market you think in terms of the number of sellers being large enough, and you said you would say in a little while what's sufficiently—what's sufficient for large enough,

and I guess you did say that in respect of a number of SMSAs where you thought they weren't sufficient. Can you tell me as a matter of general economic theory what—at what concentration ratio levels economists tend to think that profitability is affected? I understand from the potential competition, economic literature, that at some [363] point economists think that concentration ratios result in persistently high profits over extended period of time which tends to indicate a lack of competition, is that generally—

A That's the generally—

Q —valid? Can you tell me, either from your own opinion or based upon your knowledge of the literature, at what level these concentration effects tend to come into existence?

A Well, we can only measure them with the impact over the level of variation that we observe, and we find over that level of variation a consistent relationship. I think the—while the average concentration ratio is fairly high in banking in local markets there is a substantial enough variation to get observations and to be able to correlate them with other factors.

Q Well, for example, is there a level—is it four firms having 70%, is that the level at which economists tend to agree that concentration ratios begin to produce abnormal profits and tend to indicate a lack of competition?

A I think this varies greatly from industry to industry, as we indicated before, it was an empirical question, and I am not that familiar with other kinds of studies for other industries, they may be quite different.

Q Okay. Do you—in your review of the facts of this case, do you know whether the data has been assembled to—to [364] permit such a conclusion to be reached on the areas you have described as markets in this case?

A Excuse me. Would you repeat the question?

Q Okay. What I'm basically asking you is whether you have tried to make any determination as to whether any of the concentration ratios that you appear to think are applicable have produced the kind of abnormal profits which are associated with a lack of competition?

A I think the concentration ratios there are high enough to be—to be considered high, and that it would be desirable to deconcentrate them.

Now, whether you observe abnormally high profits or not is another question. I'm generally—my feeling is that those types of studies which you mentioned yesterday, the Mann and Bain and some of these other things, are—that they're inadequate for a number of different reasons, they're the best they could do with their data, they analyzed industries with what we call four digit SICC, standard industrial classification codes, which is a procedure the government uses to classify industries. But even for these codes, there's substantial variation within a product within that.

In addition, just measuring the profit rate causes a number of problems, and that is the measurements of cost and the measurement of profit are subject to some difficulty. [365] This is true in, say banking, where you may have—may have securities losses being determined by tax considerations, and that they occur in one year and not another depending on the tax consequences.

In the—these industries which these gentlemen studied, I think that the accounting for depreciation is a substantial enough problem that the measurement of actual depreciation in that cost is substantial to make—just looking at profits somewhat difficult, difficult to infer anything from that. Most of the studies that I'm familiar with in the banking area go directly to the price variables and measure that impact and don't consider profitability which may be subject to what we might—well, what I would call technically simultaneous equation bias, that is: their methods use a single equation to explain something that is really a combination of two, that is: a demand for and supply equation, and they just use a single equation or a cost function and a revenue function.

Q Well, Mann and Bain at least used profitability?

A Yes.

Q As a proxy for lack of competition, did they not?

A They used it as a proxy, I'm saying that that is

subject to—it is very difficult to interpret, and that there are superior methods to—and I think these methods, because of the [366] banking industry having so much better data available, is much easier to—although the data—data aren't perfect by any means—they're better than they are in these other industries for analytical purposes.

Q You mentioned in the banking industry the reporting of earnings before and after securities losses, and that obviously can produce variations in income, but if you exclude the securities gains and losses and just look at net operating income from the operations of the bank, that should produce the kind of data that would enable you to make at least as good an analysis as Bain and Mann made, wouldn't it?

A Well, I would prefer to go directly to the—the things which we should be measuring, that is: the prices and outputs which is what we did normally, yes.

Q You don't agree with Bain and Mann that profits are an adequate proxy for noncompetitive behavior in the banking industry?

A I think that, see—it is a question of using a—using a proxy when you can go to the actual data themselves. In other words, they gave this as a proxy for certain pricing behavior, and I say, well, let's not use a proxy, let's go and observe the behavior itself, that's why I would prefer the studies.

Q You don't agree with that aspect of their studies. [367] Is there any evidence available to you to show that the concentration ratios which you think are applicable to the various geographic areas around here have produced in fact any noncompetitive pricing?

A I have—no. But, once again, I rely on the general tendencies. If—if—desirable performance results from bad management, I don't think that's—if we observe low profits because firms are ineffective in terms of their managing of costs, that that's any reason to allow anticompetitive mergers or any other anticompetitive action.

Q I don't think I understand that, but I'll ask you another question. That is: in your—in your checking account study you found that in New Haven, which was

thought to be highly concentrated, as I understood you, had the third lowest checking account price of any of the 12 areas you studied, right?

A Uh-huh.

Q So wouldn't that tend to indicate to you that what you regarded as highly concentrated—highly concentrated area was not producing adverse impacts on consumers in that area, at least?

A Well, at that particular point in time, but as I indicated before, when we discussed a study that we were interested in long-run tendencies, we're interested in general relationship and these general relationships are borne out. Now [368] we're always going to observate—observe variations around those general relationships, and these—in the absence of any explanation, we can ascribe them to other influences that we can't measure.

Q All right. So what are the possible other influences that might have produced this result in New Haven?

THE COURT: Why don't we give him the luncheon hour to think that one over.

(Laughter.)

THE COURT: We'll meet at 2:15.

(Recess taken for lunch.)

[369] Afternoon Session

(2:20 p.m.)

MR. REYCRAFT: May I have the last question?

(Question read.)

NEIL MURPHY, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. REYCRAFT:

Q Remember that, Dr. Murphy?

A I don't know what they would be.

Q Dr. Murphy, do—do you know the economic courses involving theory of price?

A Yes.

Q Can you tell me whether in analyzing markets to as-

certain whether monopoly exists that profitablility is a factor which is taken into account?

A Generally, yes. In the theory, yes.

Q In the theory isn't it, as I recall, the marginal cost curve and the curves which show the profitability that a monopolist gets and at what point it is in his interests to restrict his output?

A His output, yes. Right.

Q Short of the point at which consumers would benefit maximally?

A Very good.

Q Well, it's a long time. Basically, profits—profits [370] are used in that form of analysis as a proxy for a non-competitive market, are they not?

A Yes.

Q And in the theory of price profitability is probably the most important indicator of an absence of competition in a market?

A In the theory of price, yes.

Q Right. And as I recall these—these cost curve analyses that's the only indicator that I recall that's used as an indicator of the absence of competition in a monopoly market?

A No, that's—the only is—it would depend on the—the only way that this can come about compared to a competitive market is that price would be higher. That's the only—that's the—referring to your analysis, which is—of the textbook case, there is a restriction in output, an increase in profit and an increase in price as opposed to a competitive outcome.

Q Right. The monopolist has power over price to use—this is what the courts—the way the courts describe it—

A Yes.

Q —in describing a monopoly condition, right?

A Right.

Q They have a power over price, a power to raise?

A I don't know about the courts that much, I know more [371] about economic theory.

Q Well, I'm not trying to test you on that. But the economists view, theoretically at least, that the monopolist

has a power to raise price in some measure dependent upon the presence or absence of competition?

A Yes.

Q As competition is absent he can raise the price higher, right?

A Yes.

Q And the cost curves and analysis shows that this produces generally a higher rate of profitability?

A Right.

Q Right?

A Right.

Q So that profitability is used by economists as an index of monopoly power?

A Yes.

Q So that if a—well, in a concentrated market where there is more than one seller, it can produce some of the same effects as a single firm monopoly market, is that right?

A It's a question of degree.

Q A matter of degree. And where there is a—part of the theory is where there is a concentrated market, fewer sellers tend to act like a single seller and price their products ac- [382] cordingly and restrict output accordingly, is that correct?

A That's correct.

Q And in a multi-firm concentrated market as well as in a single-firm concentrated market, in theory as least, proxy is an absence for competition, is that right?

A Yes. The assumption is that you have a—the cost curve—using your textbook case, is at least a minimum cost curve. The effect is on price and that the—the impact on profit—profit is a definition; the difference between price and cost.

Q Assume that the costs are generally the same for other firms, then the profits would follow from an absence of competition?

A Yes.

Q So that isn't that one of the indices of whether a particular geographical area is a market, whether firms in that market, particularly if it's claimed to be a highly

concentrated market, are able to price their products at such a level as to produce abnormal profits?

A Higher than—whether the—this, of course, depends on the definition of cost and profit. In other words, the monopoly—or the individual with market power can take it out in alternatives—alternative ways. He can pay himself more.

Q Salaries? Salaries?

[373] A Salaries. Or he can be inefficient and still make a profit.

Q In other words, he might have monopoly power and show low profits because he's inefficient?

A Yes.

Q Or because he pays himself a higher salary?

A Higher salary or various—

Q Or because some other cost is out of line with what others—

A What—no, not necessarily. But what it could be, cost—excuse me. The cost which would be the least cost, combination of resources to produce that level of output.

Q O.K. Well, my point is that I—wouldn't you expect that if the Bridgeport SMSA is in the market in the economic terms and if the concentration figures that are shown in the various Government exhibits are accurate, that that concentration would tend to produce either abnormal profits in that area or that it would be explained by higher costs or higher salaries or—there would be some explanation, and isn't the alternative to that hypothesis that maybe the Bridgeport SMSA is not an economic market?

A Well, which—you just stated—make a statement.

Q Well, O.K. I'm asking you whether—whether as an economist you wouldn't expect to find that if indeed the Bridge- [374] port SMSA is an economic market which is sufficiently insulated from outside competitive forces, that it is indeed an economic market, that if there were high concentration ratios in that market they would tend to be reflected by abnormally high profits?

A I think it would be—it could be reflected in other things. Holding all those things constant, as you said, yes, that's true.

Q O.K.

A But I don't know that those things are.

Q Right. But if—if—if the evidence is that—that the profits made by the Bridgeport banks are not abnormally high, there are a couple of possible explanations, are there not?

A Yes, sir.

Q One is that their costs are different, they're inefficient—

A Or they—yeah, they're inefficient, they're just in a high wage area or something.

Q Right. Another possible explanation is that maybe you have to look further to see whether there are other influences on the market which keep those firms from exercising power in that area, isn't that right?

A Yes. In General.

[375] Q Well—so that, for example, in the theory, at least, if—if the Bridgeport SMSA is an insulated market—insulated economic market, one would expect in the absence of some other explanation that the—with this degree of concentration shown in the Government's exhibits, that firms would be able to maximize profitability more than firms operating in a more competitive market?

A If they choose to do so, yeah.

Q Well, they have stockholders. Why would they choose not to do so?

A I don't know why they would not choose to do so.

Q But this is normal behaviour economists would expect to find?

A With random variations.

Q We're talking about the theory.

A Yes.

Q We're talking about the theory?

A Yes.

Q And I recognize there are deviations from the theory, but that is what you would expect to explain—isn't that a possible explanation, if there's an absence, assuming for the moment that there's an absence of this kind of monopolistic profit with a single-firm or multi-firm monopolistic profit, isn't it one of the explanation that the firms in this area are [376] not able to price their products without regard to substantial other competitive forces?

A That would be one interpretation. One possible.

Q I mean, for example, would you agree with me that firms in the Bridgeport SMSA cannot price their real estate loans without regard to what the savings banks in the Bridgeport SMSA do?

A Yes. I assume—in many cases—well, the FHA and VA loans are subject to a regulatory ceiling, anyway.

Q Which means that nobody has any kind of market power with respect to them, right?

A Well, that—yeah. That's an administered price by a government agency.

Q So no matter how bad my motives might be as a monopolist, if I wanted to go through the roof, with FHA interest rates I couldn't do it, right?

A You would just—well, you can't vary the discounts on them, but that's—to some extent you can vary the discounts on them.

Q You have given us another outside force which—which at least limits the ability of firms in a concentrated market to price their services without regard—or products without regard to competition, and you agreed, I think, that—that a Bridgeport firm, commercial savings bank establishing [377] interest rates for real estate loans would reasonably take into consideration the rates charged—

A Yes.

Q —by mutual savings banks—

A We've said that before.

Q —right? The difference—what I'm trying to do, Doctor, I don't want to kid around, is to—I'm arguing with you that the market is not the Bridgeport SMSA, but that it is at least the service area of the Connecticut National Bank, and isn't it a fact that if Connecticut National Bank prices its real estate loans on a system-wide basis, taking into consideration that from time to time there may be a credit variation, there may be a 40 year old house instead of a brand new house, there might be a different rate of—but assume these standards are applied on a system-wide basis, wouldn't the person establishing those rates take into consideration the pricing practices of all commercial savings banks and all mutual savings and loan associations and all savings banks in the service area?

A Well, if he were taking—if he were to do this, he would, in establishing—using your hypothetical, if he were to consider a range of alternative areas in which prices may vary, and he was going—and he was constrained to set one price, he would determine a maximum profit position based on [378] the sum of all these things and come up with some—some profit maximizing position. Now, it's conceivable that he would ignore—

Q If he raised his price a quarter of a point, for example, and he only lost one per cent of his business to some competitor, that wouldn't be a very significant factor?

A Would be relevant elasticities in these markets.

Q At least—theoretically, at least—theoretically you would—an economist would try to determine the point to which he could raise his prices without attracting sufficient new competition to—so that he still maximizes profits, right?

A Right.

Q And an intelligent, prudent businessman pricing his services over a service area would take all of this competition in the service area into account, wouldn't he?

A If he were constrained to this decision—to make a single decision.

Q If he were pricing on a system-wide basis?

A Yes.

Q If he engaged in area pricing which you—well, you know, you didn't testify one way or the other about that, because you said you didn't know?

A Right.

[379] Q But if he were discriminating on an area basis, that would be different?

A Yes.

Q But if he had a system-wide pricing it would be logical to assume that he would respond to the competitive forces throughout his service area, right?

A He would consider them all and he may—may well choose the price which would maximize profits which would be determined in the most monopolistic area. You're still talking about theory?

Q Yes.

A This depends on the relevant marginal conditions in each one.

Q But they're all factors that would be taken into consideration in making that judgment?

A Yeah.

Q As to where you set your price?

A Yeah.

Q And that would be true—and as you have pointed out, of course, the Government has placed constraints on some areas of the mortgage market and, indeed, the Government takes some actions which affect the interest rates which banks may pay, commercial banks and savings banks, as you testified yesterday, in the area of Regulation Q and the FDIC rules?

[380] A And the Home Loan Bank Board, yes.

Q Right. So that no matter how monopolistic a firm's intentions might be in either of these areas, there are constraints?

A There are constraints. But in general, my feeling is that these—there's—of course, when you consider demand deposits there's an explicit prohibition of interest payments and there are some regulations with respect to maximum —ceiling rates on time and savings deposits. However, it can be argued that banks would compete in other ways. Being constrained from competing on a price basis they would compete on a quality or convenience basis. I think this is the way it happens in banking.

Q Right. Commercial banks, as you have pointed out, are prohibited by law from paying interest on demand deposits, right?

A Right.

Q Which puts them at some—other things being equal —at some competitive advantage with mutual savings banks, right?

A I say, it's a competitive advantage.

Q If you hold things constant?

A It's a competitive advantage for people not to want to get access to the payments mechanism with the exception—[381] very minor exceptions of a few states in which a demand deposit business of mutual savings banks is trivial. This is an advantage. That if you want to get access to the mechanism you can't go anyplace else.

Q Well, O.K., you don't agree with me on that. If it's a fact that a bank reasonably takes into consideration the prices that other firms charge who operate in the area—let me ask you whether if you know if the Connecticut Bank and Trust Company of Hartford and the Hartford Bank operate in the service area of the Connecticut National Bank?

A I think they do; yes, they do.

Q You may have noticed a Connecticut Bank and Trust office a block or two from your—

A Yes.

Q And I believe you testified that they came in here by acquisition.

A Right, right.

Q If I am not mistaken?

A Acquisition of an industrial bank and two de novo offices, yes.

Q Right, right. Do you think that the Connecticut National Bank ought reasonably to take into account the pricing that Connecticut Bank and Trust Company does in Bridgeport in arriving at its prices for its products?

[382] A Yes.

Q And do you know whether the Hartford National Bank has offices in the Bridgeport SMSA?

A I believe they just established a de novo office.

Q At the least, do you know whether Hartford National has offices within the service area of the Connecticut National Bank?

A I could check the—

Q Why don't you take a look at it?

A Yes. They—they have offices—offices in Stamford and then they have—and in Fairfield.

Q And both Stamford and Fairfield are in—in the Connecticut National Bank's service area, is that right?

A The service area of those branches.

Q Well, I'm referring to the bank-wide service area. They are in the bank-wide service area of Connecticut National Bank, right?

A Right.

Q So that logically and rationally the management of Connecticut National Bank ought to take into account in

pricing their products the prices at which Hartford National prices its products?

A In the area.

Q In the area?

[383] A Yes. In that area. In those areas.

Q Yes. Again—but assuming—again assuming that the bank prices its services on a system-wide basis, the presence of Hartford National at Stamford and Fairfield could be expected to have a system-wide impact, is that right?

A Yeah. But there also might be a system-wide variation in convenience factors, in the quality of service that could be varied also.

Q Let's hold those things for a moment and—constant and stick with the price. At least as to price you would expect that it could have an impact, and ought to have an impact, on the system-wide pricing, is that right?

A If system-wide pricing is the rule. Once again, this would depend on various—in the theoretical sense it would depend on the various marginal conditions: marginal revenue, marginal cost conditions in each situation.

Q Right. I can't ask you to quantify what the degree of that impact would be. Maybe you could do it if you had enough data, but I know none of us have it at the moment.

A No.

Q You know also, don't you, that Connecticut Bank and Trust Company made an acquisition in New Haven, you—you testified about that this morning?

A Yes, sir.

[384] Q And that Hartford National Bank is also in New Haven?

A Uh-huh.

Q And if the First New Haven National Bank prices its services on a system-wide basis wouldn't the presence of those banks in the head office town, the First New Haven, be logically expected to have an impact on the pricing decisions of First New Haven National Bank?

A Given all those conditions—we have gone through them several times—yes.

Q So that First New Haven could not price its services based only on decisions made in its own SMSA, it would have to take into account decisions made in Hartford, maybe—may—decisions made in Fairfield by Union Trust Company? I don't know.

A This—once again, this would be granting all the assumptions that you have made.

Q Right. O. K. Well, isn't it—isn't it fair to say that analyzing banking markets in terms of the SMSA does not fully take into account all of the competitive influences which impact on the SMSA?

A It's a question of degree. Everything is—general equilibrium. The economy, United States economy, you can say everything else related to each other, to everything. But it's a question of degree, yeah. Of course, they're affected by [385] outside things. They're affected by what the Federal Reserve system does in conducting monetary policy.

Q In supplying of funds to banks or reducing the supply of funds?

A Well, their management of their open market account and their other monetary policy action, yes.

Q Well, this economic theory that—that discusses and analyses market power in monopoly terms or in—shared monopoly terms, isn't the general assumption that the concentration ratios which economists say produce anti-competitive conduct is based on the assumption that there are no significant outside competitive forces affecting those markets?

A To a degree, yes.

Q Let me take, for example, an analysis and then I won't have anything—I remember this from my book—but assume that first year economic book said: let's take the steel industry, and there are five or six firms in the steel industry in the United States, and if you have a concentration ratio of—four-firm concentration ratio of 60%, the profitability could be expected to be such. Now, if you exclude foreign competition you couldn't translate the lesson and learn from that example and learn from the same concentration ratio in the New Haven SMSA, could you, because of the outside influences?

[386] A I don't know that these—given the conditions which you have stated—and I don't know that these conditions hold—and I have stated that market areas, especially for retail customers, are dominated by convenience factors, and that this—and commuting patterns—and that these market areas are then—we then can see variation in performance; and we have measured this in one form or another, depending on the relative market power and the SMSA, in many cases is a relevant market in which to observe this.

[387] Q Well, you testified yesterday that the SMSA is a good place to start?

A Yeah.

Q And, you know, I don't think anybody is going to argue about that Professor—Doctor Glantz was here and testified about that these constants were used in analyzing labor market and analyzing employment, and I—no one, I, at least, am not contending that it is a useless concept, but it is a concept that's used for a lot of different purposes, isn't it?

A Yes.

Q And it wasn't constructed to be used to analyze bank markets, was it?

A No.

Q And, in fact, the people who constructed it probably didn't have in mind bank markets at all?

A I don't know what they had in mind.

Q There's no—at least you don't know of any reason to think that they did?

A No.

Q So that is just a starting place, isn't it, and in order to—to really—you can't just say: well, since this is said that's a SMSA and say that's the end of that, can you?

A Not normally, no.

[388] Q Doctor Murphy, you testified this morning that you thought that a bank in Woodbridge would give a Bridgeport bank reasonable access to the New Haven SMSA, right? Acquisition?

A It would give them a foothold in the SMSA.

Q A foothold?

A Yes.

Q I'd like to show you Plaintiff's Exhibit No. 44, which shows the Milford office of the Connecticut National Bank, which I'm told was opened in 1956, and I believe—if I understand the exhibit correct, it indicates that there are only 62 deposit accounts in the Milford office from the New Haven SMSA, from residents in the New Haven SMSA, that's after 16 years.

Now, Milford is maybe a little further away than Woodbridge, but it is a commuting town into New Haven. Would you have any reason to expect that Connecticut National would do any better out of Woodbridge than out of Milford?

A Well, I'm not—have no reason to—well, given the definition of the SMSA as a—I'm sorry, Milford is in the—is in the New Haven SMSA? That's the one on the border, right?

Q I think that's in Bridgeport. I think.

A Let me check that.

Q I don't—please don't take my word for it. Check it.

[389] A Milford is in the New Haven—Bridgeport SMSA.

Q Okay. So after 16 years that office has managed to get 62 deposit accounts out of New Haven SMSA, which tends to confirm the testimony you gave earlier that banking, at least for this office, is localized. Do you have any reason to think that there are any factors that would produce different results in Woodbridge or North Branford, for that matter?

A I'd like to—I—I would imagine that those being located in the New Haven SMSA would be—would be more closely tied to an integrated—you will recall that we indicated that this four-town area in which defendants both have offices is somewhat difficult to actually delineate where the cutoff point is.

Q Right.

A So in the Milford case, I don't—I don't know that that's—

Q It's about equidistant, right?

A We—well, I have no knowledge about the commuting patterns or the capabilities—

Q I don't need to—but let me show you the map,

which shows that Milford—you know, it's about in the middle, Stratford's between Milford and Bridgeport, and West Haven is between Milford and New Haven, so it's about in the middle, right?

[390] A Well, the fact that it's in the Bridgeport SMSA would indicate that the town is somewhat more related to the Bridgeport economy. But as I say, this town is one which—this area, this Milford, Orange, Ansonia, Derby area is one in which the actual cutoff point as to whether it is one place or another is difficult to establish.

Q Well, a Milford resident would appear to have an equal choice between Bridgeport and New Haven, wouldn't he?

A On the map. Assuming he can get there. In Maine we say, you know, you can't get there from "heyah", I don't know.

Q He can—

A I don't know what the capabilities of the highway system are.

Q How about North Branford?

THE COURT: Actually, in some respects it is a lot easier from most areas in New Haven to get to Milford than to Woodbridge because of the Connecticut Throughway and Route 1, if I recollect right. If my geography is correct. To get over to Woodbridge, one way from New Haven is through Whalley, Fountain Street, all quite different areas to travel. So with that assumption, what would your answer be?

THE WITNESS: I'm not sure what—what the answer would be. All I know is that the SMSA concept, [391] the way it is applied, would indicate that Milford is more closely tied to Bridgeport than New Haven.

Q Well, maybe—maybe that concept—maybe Milford was put in the Bridgeport SMSA before the Connecticut Turnpike was completed, also.

A They reviewed that in 1970 for the census.

Q All right.

THE COURT: I'm sorry, but what difference would it make, a depositor wouldn't say: well, I'll go to Woodbridge because it is in the New Haven SMSA, but I

won't go to Milford because it is in the Bridgeport—the question is: do you have an opinion that would lead you to believe that Woodbridge would have more success for CNB in getting New Haven depositors than their Milford office has, regardless of SMSA? Do you have an opinion?

THE WITNESS: Well, my opinion—my opinion would be based on the commuting patterns. Whether the distance is—it's an empirical question as to whether the —how much commuting goes on, I mean whether there's —whether the access is easier or not, it is the data with respect to the commuting patterns, and the commuting patterns would indicate, given the nature of the definition of that geographical area, that it [392] is more closely tied to Bridgeport. For that reason, if it is closely tied, we would consider it—that the customer alternatives would be determined by these patterns. Whereas in New Haven they would be determined by the internal —the depositor would—would make the decision based on what's convenient to him. If he commutes from Milford to New Haven, I would say that New Haven would be a more logical choice than Bridgeport.

THE COURT: Does your chart show, Mr. Reycraft, what the amount of depositor—the amount of depositors from Bridgeport who have accounts in Milford?

MR. REYCRAFT: This particular one is a government's exhibit No. 44, and it shows the Milford deposits in Orange, West Haven, Shelton, Stratford and then in the remainder of the Bridgeport SMSA, and it shows that in the remainder of the Bridgeport SMSA has 223 deposit accounts, but that—

THE WITNESS: That's dollar volume, 223,000—

MR. REYCRAFT: Okay.

Q But it shows, does it not, that 87.4% of that office's business is from Milford, right?

A Right.

Q So, then, the question still is whether an office [393] in Woodbridge could be expected to do any better in going—getting business from the surrounding areas, whether it is New Haven or Seymour or Ansonia or Bethany, than the Connecticut National Bank's Milford

office has done where 87.4% of the deposits come from Milford?

A I think if we looked at some of these other exhibits —that's why you say one exhibit—if we look at some of the other offices, we might see some different patterns. That's one in the area which we say was particular difficult to determine—to some extent has characteristics of being separate.

Q Well, but you testified based on the government exhibits, I believe largely, that—that one could expect the business of an office in a place like Milford or Orange or Ansonia or Derby to be highly localized, is that right?

A To be localized to the extent that—yeah, residents and people who work there don't travel too far back and forth to work or in their shopping patterns.

Q Right. Well, you say—I'm—I don't want to misquote you, but I understood you to say that in those offices for which the government put in separate exhibits, that the business was highly localized in those—in the office—in the towns in which those offices were located?

A The exhibits that we covered in direct testimony [394] indicated a substantial amount of business from the adjacent towns, and the remainder of the SMSA in which it was located.

Q Are there any exhibits which you relied on in your direct testimony which would encourage you to think that a Woodbridge office would get a substantial amount of business from New Haven?

A Not that particular situation, no.

Q Now, Plaintiff's Exhibit No. 3 indicates that—

THE COURT: Excuse me. Did you say there was a chart that demonstrated with respect to some branches of CNB? Or did you imply that there was a chart which demonstrated that its business was not localized and that it did receive a substantial amount of business outside the town in which it was located but within the SMSA?

THE WITNESS: Yes, sir.

THE COURT: What chart was that?

THE WITNESS: Well, first of all, Exhibit 33 for the home office.

THE COURT: What were the percentages there?

THE WITNESS: See that 58.6% of the smallest—smallest demand—IPC demand deposit accounts were derived from the City of Bridgeport, and that within the rest of the SMSA, there was slightly less than [395] 33% of their deposits from the surrounding towns in the SMSA.

THE COURT: Is that the statistics on the home office?

THE WITNESS: Yes.

THE COURT: How about its branches?

MR. REYCRAFT: Let me show you the Orange office. You have P-43?

THE COURT: Are there any that have—

THE WITNESS: P-43 shows—

THE COURT: —less than 75% local business in any of its branches?

THE WITNESS: P-43, you say show—

MR. REYCRAFT: P-43 shows that—as 56.6—it also shows out of New Haven and, of course, Orange touches on the City of New Haven, it has 3.8% of its deposits.

THE COURT: What exhibit numbers are we looking at?

MR. REYCRAFT: P-43, your Honor.

THE COURT: 33 and 43 are the two charts that we have referred to?

MR. REYCRAFT: P-44 is the Milford office and P-43 is the Orange office.

[396] THE COURT: All right. Thank you.

Q So that P-43 shows, Doctor Murphy, does it not, that the Orange office, which I have been told was opened in 1956, after that period of time, has 3.8% of its deposits out of the City of New Haven?

A Yes.

Q Which indicates, does it not, that an office, even that close to New Haven, was not a very effective way of competing in New Haven?

A Well—

Q And I point out also that Orange is also immediately adjacent to Woodbridge.

A Yes, but they were able to compete and get substantial business in other towns within the SMSA.

Q Well, they got 17% from Milford, which is in the Bridgeport, SMSA, right?

A Right.

Q And they got some from West Haven, but they only got 3.8% after 16 years in New Haven?

A Right, they're in the same period in which New Haven was experiencing population declines?

Q Right.

A Right.

Q So you would—wouldn't you agree with the that an [397] office in Orange is not a very effective way of competing effectively in the City of New Haven?

A Well, it's—I don't know that I would—it doesn't get much business from New Haven, but it gets business from other areas surrounding it and in the SMSA area, it gets business where the growth is taking place in the area, where the growth has taken place.

Q Well, would you expect that the—that this would be—indicate very substantial amount of commercial and industrial loan business?

A There's no—as far as the—well, that's difficult to say. My—my presumption is that Connecticut National Bank is organized like most other banks that I'm familiar with that conduct most of their commercial business in their home office with the branch manager having more limited authority as to the decisions he can make. So that I'm not sure what the—with total loans here, it is not—it is difficult to say what kind of loans they are on this on this exhibit.

THE COURT: You know, you just said something that interests me, not because you gave it much weight yesterday, but yesterday I asked you several questions which had on their fringes some relation to what you just said. I asked you whether or not you had an opinion as to whether or not mergers had [398] an effect on the small businessman because of the change of the home office, the small businessman with the smaller bank gains a reputation, many other things with the small man, and after a merger is there any effect on the small businessman with respect to commercial loans and so forth—in

other words, so to speak, the branch manager in a merger might well have been the home office president, in quotes, of a small bank, and I read your answer a couple of times last night, and once again today, and I take it you didn't give much weight to that.

So my question now is: do you know of any studies that reflect an answer to my question, that is: what effect mergers have had on small businessmen in the community?

THE WITNESS: No, sir, not directly. Not that I can —there have been some surveys, post, pre-merger surveys, and post-merger surveys in various parts of the country, and I—and I can't recall what the conclusions were.

THE COURT: But you do recognize, however, that a branch manager, at least with respect to commercial loans—

THE WITNESS: Yeah.

[399] THE COURT: —probably cannot make the decisions in at least some areas without the home office approval and consideration?

THE WITNESS: I would.

THE COURT: I thought that's what you said a moment ago.

THE WITNESS: Yeah, my feeling would be that—the kinds of things which he stated regarding the character and integrity and so forth, that information would have been—would be equally available to the offices of the acquiring bank, and if it were indeed that was a good, valuable customer, and satisfied all the requirements that he would be accommodated. But as a general rule, these commercial loans—commercial loan administration and so forth is conducted at a—by senior management.

THE COURT: There are, I think, some objective criteria, that's why I asked you if there were any studies.

For example, a loan bank in a small town had X amount of unsecured loans out prior to its merger with one of the ten leading banks in the state. After the merger there were Y amount of unsecured loans which might indicate that the merger has had an affect.

[400] Do you see my point?

THE WITNESS: Yes.

THE COURT: You say you don't know of any studies?

THE WITNESS: I don't know. There have been some attempts to assess this, but I don't recall the results.

THE COURT: Go ahead, Mr. Reycraft.

Q Doctor Murphy, you have expressed some concern about the number of banking alternatives available to consumers in the State of Connecticut. I would like to ask you to take a look at D-4, Defendants' Exhibit, and review that exhibit for a moment.

The exhibits shows, Doctor Murphy, according to the heading, in the columns, the number of banking alternatives available in 1955 in the various towns of Connecticut, and then compares again the number of alternatives available in 1971, and it shows with respect to Fairfield County, according to the exhibit, an increase of 20 alternatives over that period, no change in the number of alternatives in three towns, and decreases in the number of alternatives of zero. And it shows with respect to New Haven County increases in its number of banking alternatives, 23, no change in three towns, and decreases in one. And it shows with respect to the rest of Connecticut on the last [401] page 64 increases, no change in 54 cases, and one decrease, and it shows for all of the State of Connecticut increases in alternatives in 107 towns, no change in 60 and decreases in two towns.

Now, assuming that that exhibit accurately sets forth the facts, and the defendants, of course, have the burden of showing that in our case, what does that indicate to you with respect to the state of competition among these various towns in the State of Connecticut?

A Well, there are a number of things that occur to me. First, this is consistent with our presentation regarding the dramatic increases in numbers of offices, that the amount of expansion and our discussion of expansion going outside their headquarters and establishing facilities in other towns, that this is consistent with that, but another thing that occurs to me is that when you talk about —because—well, look at our other exhibit, I recall it was P-70, regarding the number of banks that were involved in most of this expansion activity—that you probably have increased the—or that the same banks are appearing

in a lot of these different towns. In other words, when you say Fairfield County has 20 increases, that a substantial portion of them are accounted by much less than 20 banks, I would imagine something on the order of five or six.

[402] Q Well, as far as the consumers in Norwalk are concerned, if I understand your previous testimony correctly, you think, small consumers their alternatives are largely limited to Norwalk?

A Their alternatives are limited to their normal pattern of commuting and shopping in these—their normal life habits that they—the way they conduct their business.

Q If there is an increase in the number of alternatives available to them, you would agree that that's a procompetitive consequence, wouldn't you?

A Yes, sir.

Q So that in each case where there is an increase in the number of alternatives available to the consumers in any of these towns, you would agree that that is procompetitive, would you not?

A Well, I would—to the extent that—I'm not sure—I don't want to agree that the town has any meaning as a market, it means that there are more alternatives—or that there are more branches, that's what it means, but the banks have established more branches in more towns.

Q Well, you understand when—when referring—when this exhibit refers to alternatives, it doesn't mean another branch of the same bank?

A Yes.

[403] Q It means an alternative to the consumer?

A Right, another bank—what we're interested in is alternatives within a market area. The number of different alternatives.

Q Right.

A What I'm saying is you are double counting in the sense that if you establish a branch in two different towns that are already—these towns are towns in which—there's a commuting pattern, that there may be some element of double counting here. By using the town as the dimension. I mean if we take the SMSA as the dimension or the county or something else, we would have a different figure.

Q Let's take Westport on the first page, and the ex-

hibit indicates that there were two commercial banks and no savings banks in Westport in 1955, and that in 1971 there were three commercial banks and two savings banks in 1971, for a net increase of three choices for consumers.

Now, for people in Westport, you would agree, would you not, that that tends to indicate a pro-competitive situation?

A It tends to exhibit—well, it tends to indicate that there's more convenience for them.

THE COURT: I'm not sure I understand the chart. Take the Town of Wolcott, SMSA, New Haven.

[404] MR. REYCRAFT: Right.

THE COURT: In 1955 it had no commercial banks.

MR. REYCRAFT: Right.

THE COURT: And on the chart it indicates there were two in 1971. Does the two mean two different commercial banks, or could it mean the same bank with two branches?

MR. REYCRAFT: No, it means two different—two alternatives.

THE COURT: All right. So for New Haven, then, we had seven different commercial banks in 1955, is that correct?

MR. REYCRAFT: Yes, sir.

THE COURT: In 1971 we had five?

MR. REYCRAFT: That's right, we had two less.

THE COURT: Does that mean that two banks withdrew, left the City of New Haven, or does it mean—

MR. REYCRAFT: They merged.

THE COURT: —or does it mean they could have merged?

MR. REYCRAFT: Merged with each other. New Haven appears to be the only—

THE COURT: Decrease.

[405] MR. REYCRAFT: —decrease, yes, sir.

THE COURT: In alternatives. Would your merger change that statistic at all?

MR. REYCRAFT: No, sir.

THE COURT: Because of the alternatives?

MR. REYCRAFT: The alternatives would be there.

THE COURT: The alternatives would exist? Despite the same name?

MR. REYCRAFT: Exactly the same alternatives would exist.

THE COURT: Thank you.

Q So that generally—wouldn't you agree, Doctor, that —I think your exhibit—or the government exhibit showed a decrease in the number of the banks from maybe something like from a hundred down to sixty, is that roughly—

A Something of that order. Of that order of magnitude, yes.

Q Now, if there were one hundred banks, one each in a hundred different towns, that wouldn't be a very pro-competitive state of affairs, would it?

A Not necessarily.

Q You would assume it wouldn't be?

A Well, if there are five towns within a metropolitan [406] area and each one had a bank, you would have five banks in the metropolitan area. And to the extent that the system is tied together by transportation links there would be more alternatives.

Q Is it possible to have in the State of Connecticut a more pro-competitive banking structure with sixty banks than with a hundred banks?

A Yes.

Q And how might that come about?

A That would come about by local markets being de-concentrated by outside entrants.

THE COURT: You were asked is it possible, and you said: yes.

THE WITNESS: Yes.

THE COURT: Now let me ask: based on your studies, do you have an opinion as to whether or not it is reasonably probable that that's happened in the State of Connecticut?

THE WITNESS: Yes, I think it has.

Q Do you think between 1955 and 1971, despite the decrease in the number of banks, the Connecticut—Connecticut as a whole has become more competitive in banking?

A Yes.

Q And D-4 tends to substantiate that, does it not?

[407] A Well, I'm not—

Q I'm not asking you to sponsor it.

A No.

Q You didn't prepare it.

THE COURT: Excuse me, again, Mr. Reycraft. If you were asked to list why you—asked to arrive at that conclusion, you just gave, would one of the factors be the benefits derived from mergers?

THE WITNESS: From—from mergers. Foothold mergers, mergers that resulted in new banks entering areas and acquiring smaller participants that were not as effective in the area.

THE COURT: So that if in the recent past we had mergers of two large sized banks, you would not attribute that particular merger—

THE WITNESS: That's correct.

THE COURT: —to your—

THE WITNESS: That's right. In general, I think, Mr. Reycraft indicated—in general is the system more competitive? I would say based on our exhibits regarding the extent to which the larger banks have established themselves in areas where they were not represented before, either by de novo branching or by foothold mergers, that the system is more competitive. [408] I haven't —there may have been some mergers along the line which did not have this effect, but I don't—

THE COURT: As an economist, do you generally have the opinion as a general rule that mergers between two large firms does not have the pro-competitive results as the merger between a large firm and a smaller one?

THE WITNESS: Assuming you are operating in different areas, your Honor.

THE COURT: Yes.

THE WITNESS: In general, yes.

THE COURT: I'm assuming that.

THE WITNESS: Right.

THE COURT: When, as a general rule, do you feel the merger of two large firms is beneficial?

THE WITNESS: It is difficult for me to think. If they were both very strong in their markets and if we could determine that there was a potential for competition between them in the future. There always are mer-

gers in banking that are brought about by financial weakness of a bank, and this would be a completely different situation. In that case it would be desirable—or it might be considered desirable on the part of the banking authorities [409] to permit a merger.

For example, the Public Bank of Detroit was a very large bank and was acquired by another bank in Detroit as part of an FDIC—well, the finding was that the bank was insolvent and this was the way that the FDIC took care of it, was to arrange a merger, but that's a different kind of situation.

THE COURT: No indication here in your studies of this particular case that that—

THE WITNESS: No, no, no, I think that the—New England in general has a very high rating as far as banking soundness goes.

THE COURT: I suppose you study cases that come down with respect to mergers of firms as well as banks? Other businesses?

THE WITNESS: Not in the detail—I don't have the experience of having analyzed them in detail.

THE COURT: Do you find that you are more apt to agree when you see approval of a—the merger of a large firm with a small one, rather than two large firms?

THE WITNESS: I think in general, but I don't have the expertise to—I think to comment on this, but as a general statement as an economist, yes.

[410] THE COURT: How about in the field of banking, have you made a study of the cases that have been disapproved and approved by the courts? With respect to the size of the—

THE WITNESS: yes, I'm aware of such studies, yes.

THE COURT: Have they been published somewhere?

THE WITNESS: Well, there was one study recently published on the effect of the Bank Merger Act had in 1960 on the rate and kinds of acquisitions that had taken place, it was prepared by Doctor Paul Horowitz and Barnard Shaw, and their conclusion was that the one effect of the Bank Merger Act of 1960, after reviewing all the trends, was that in general mergers among large banks have not taken place with the frequency that they did before the Bank Merger Act, and that this seemed to be

the—their interpretation that this seemed to be the intent of Congress. That while a merger trend has continued throughout the country, that this merger trend has had more beneficial effects in the 12 years that the Bank Merger Act has been on the books.

THE COURT: Now let me ask you this hypothetical: assuming, therefore, that the First New Haven was not composed of one home office with 20—assuming for [411] the—arguendo, that the First New Haven had a home office and 20 branches, but rather, there was the First New Haven and 20 independent small banks in 20 different locations, where would you draw the line, in your opinion, as to the effects the bad effect of a merger by CNB with those 21 separate independent banks?

THE WITNESS: Were they have equal size?

THE COURT: Are you familiar with the branches owned by the First New Haven? Let's assume they're about the same size.

THE WITNESS: As independent decision making units?

THE COURT: Yes.

THE WITNESS: Well, I would consider if they were the same size, that acquisition of any one would be—I assume the home office is larger, it would be less—would probably not be harmful.

THE COURT: If they acquired all of them?

THE WITNESS: All of them?

THE COURT: All of them.

THE WITNESS: Oh, yes. I think it would be—it would be the same thing as acquiring the bank itself.

THE COURT: Exactly. So where would you draw the line?

[412] THE WITNESS: Well, I think I'd have to look at, you know, how quickly, you know—if it's a sequential process, I think at some period it would—decide—to stop at some point.

THE COURT: Actually, I think—to sum up what I'm trying to say is: if the First New Haven wasn't that big, say, it had a home office and ten branches, would you still feel that this merger—

THE WITNESS: Oh, no, in other words, if the merger was with one of the smaller banks in the area, yes.

THE COURT: What would be a small bank, other than a separate independent bank like the Branford bank or the Woodbridge bank, what do you consider, in Connecticut, from your studies, would be a small outfit that CNB could take over without your getting a feeling that there were anticompetitive effects?

THE WITNESS: Well, I think it would be dependent on the market shares, but, you know, banks up to probably 25 or 30 million dollars, that might be—it's difficult to say. It would depend on the market shares.

I might point out that that sized bank, as far as the whole United States is concerned, is a large [413] bank, but in Connecticut, it would be, I think—it would be relatively small.

THE COURT: You may proceed, Mr. Reycraft.

Q Doctor Murphy, the study by Paul Horowitz that you mentioned—

A In the Antitrust Journal, I think, or Journal of Antitrust Law, I forget, one of those.

Q That study, when it says that a lot of mergers had been discouraged by the Bank Merger Act is referring to horizontal mergers between direct competitors, is it not?

A I'm not sure about whether he—he talked about mergers among different sized classes of banks, and I am not sure about the locations involved.

Q You aren't sure whether it was limited to direct competitors or not?

A No, no.

Q All right. And this particular merger you have already agreed is not a merger between direct competitors when you forget about the four-town area?

A Uh-huh.

Q Okay. Are you familiar with a merger which took place between the Fairfield County Trust Company and the Union and New Haven Trust Company?

A Yes, sir.

[414] Q Was that merger in your view a horizontal merger?

A No.

Q No direct competition?

A Yes.

Q Of any consequence between them?

A That's right, that's correct.

Q Do you recall the size of the resulting bank?

A At the time Fairfield County Trust had deposits of 298 million, and Union and New Haven had deposits of 113 million, so the combination would be about 400 million in total deposits.

Q Do you have an opinion as to whether that was a merger which had unacceptable anticompetitive consequences?

A I think there was serious question, yes, as to whether it—I think in contrast to this case, the banks involved were somewhat smaller, they weren't quite as close in terms of geographical proximity, but in general, I think there was a serious question there, yes.

Q And what's the nature of the question in your mind?

A Well, it was a question of the terms of the effect on potential competition. Both banks being of sufficient size to exert influence by themselves.

Q You think either of them were potential entrants into some other areas?

A Yes, sir.

[415] Q Do you know whether since that merger the Union Trust Company, which is the merged bank, has entered into any other concentrated markets?

A No, sir.

Q Do you know that they have now entered into New London?

A I didn't know that, no, it may be in the exhibits, but I didn't recall that fact exactly, no.

Q I think you will find that that's the case.

A Yeah.

Q Do you recall whether New London, in your view of the market, was highly concentrated, or unconcentrated, or what?

A I don't recall what the exact figures—

Q Do you have a table there that would show that?

THE COURT: What relevance would that have? I mean we're not going to try the Fairfield and Union Trust Company.

MR. REYCRAFT: I think our testimony is going to show that that entry into that highly concentrated market would not have taken place but for the merger, and my

argument is that this merger will enable this bank to enter Hartford, which neither one will do.

A When did they enter, sir?

Q It was approved within—the merger took place within [416] the past year, maybe within six months, actually.

A I—

Q It's not on your data.

A It's not on my exhibit.

Q Do you have the New London, Groton, Norwich SMSA/

A I'm sorry, New London?

Q Yes, New London, I think, that's all the same SMSA.

A I looked at—

THE COURT: Of course, it may be relevant, but this expert already said that in his opinion that either one or both of these defendants had the capability of doing what you say they can only do by a merger. I'll allow you to pursue it.

MR. REYCRAFT: Our testimony is going to indicate that they would not have.

THE COURT: My next statement was: isn't this more properly an area for your case? Because he's already—do I misquote you?

THE WITNESS: No, sir.

THE COURT: When you say they have—

THE WITNESS: No, sir.

THE COURT: —independently without a merger—

THE WITNESS: Right.

THE COURT: —they have this capability?

[417] THE WITNESS: Yes, sir.

Q Will you refer to P-87, Doctor Murphy?

A Yes?

Q In your view, is that SMSA highly concentrated?

A New London?

Q Yes.

A Yes, it appears to be.

Q And in your view, if I told you that Union Trust Company acquired Winthrop Bank and Trust Company, would that be a desirable thing?

A Yes.

Q Would that be pro-competitive?

A I should think so, yes, sir.

Q Even with that acquisition, do you think the New London SMSA could use further entry?

A Yes, I think so. I don't—yes, I do. In the absence of any other evidence, I haven't studied this as I have the others.

Q I'm just looking at the raw numbers here on P-87.

A Right.

Q And if this proposed consolidation resulted in entry of the merged bank into the New London SMSA, would you regard this as a pro-competitive consequence of the merger? You may not like some aspects of it, but I'm asking you whether you would regard [418] that particular aspect of it as pro-competitive?

A Yes.

Q Doctor Murphy, you testified that you were a member of the staff of the committee on—Commission on Financial Structure and Regulation?

A Yes, sir.

Q Which has produced what is sometimes referred to as the Hunt Report?

A Yes, sir. Can we refer to it as the Hunt Commision from now on?

Q Hunt Commission. May I refer you to paragraph numbered 5 on Page 24 under the regulation of interest rate ceiling on deposits, and I will ask you if you will read that.

I'm sorry to say that's the only copy I have. I will show it to Mr. Clark.

Let me show it to Mr. Clark after you have read it.

A I haven't read it, but you can show it to him.

THE COURT: Do you know what the area of the Union and New Haven and Winthrop—

MR. REYCRAFT: Yes, sir.

THE COURT: You expressed an opinion, without knowing much more than what Mr. Reycraft told you, at least I got that impression that you thought that was a pro-competitive move?

[419] THE WITNESS: That entering—yes, that entering that market was—

THE COURT: How do you know that? I mean how

do you know that that merger hasn't stifled some categories of Winthrop company's customers? I mean just because Union New Haven Trust is big, Winthrop is small a fortiori. Good merger, how do you know what without making a study of it?

THE WITNESS: I was just talking about the general tendencies, sir.

THE COURT: If you went down to New London into some of the small towns around New London and spoke to 300 of Winthrop Bank's customers, and they expressed great dissatisfaction, as a hypothetical, let me assure you, with the merger, that general quality, rates, every single thing that a bank should do for a customer wasn't being done, but used to be done when it was a small independent bank, wouldn't you come away with the opinion that perhaps that merger wasn't a good one for the area?

THE WITNESS: Well, in general, sir, that—that evidence, if it were gathered, would tend to indicate that perhaps the merger was not a good one, in general terms, we consider that the smaller bank [420] doesn't have the resources, the fact that they're small may be they have had conservative management over the time and that just in general terms a branch office of a bank with offering a wider of services will do—will be better for the community. And generally this is the—what we find in applications.

There is—in addition to the antitrust considerations, banking agencies are supposed to consider convenience and needs, in almost every case that comes in of this nature they say the larger bank will provide more services and convenience and needs of the community will be served, but it is an empirical question.

THE COURT: What agencies?

THE WITNESS: Well, this would be the agency—with respect to the Bank Merger Act, the relevant agency is the one which—under whose jurisdiction the resulting bank would fall. In this case there's two national banks, so its resulting bank is the national bank and the decision is up to the Comptroller of the Currency.

If the two banks were both state member banks and

the resulting bank were a—would once again be a [421] state member bank, the federal reserve would have authority. In the state nonmember banks the Federal Deposit Insurance Corporation has the jurisdiction.

THE COURT: Before this case is over, gentlemen, will I have the benefit of the reports that the witness is referring to?

MR. REYCRAFT: They are in the record.

MR. CLARK: Yes, sir, we have entered them, and I intended to comment on them.

THE COURT: Thank you. Proceed, Mr. Reycraft.

Q Doctor Murphy—

A May I see that again, sir?

Q Let me show you again the Hunt Commission report and refer you to paragraph numbered 5 on Page 24.

A Yes, sir.

Q Would you read that aloud because of absence of copies?

A "After the limited period stipulated in Recommendation 4-A above, the Board may only establish uniform interest rate ceiling for depositary institutions under its jurisdiction with no differentials based on whether or not"—excuse me—"third party service—third party payment services are provided are on the time such services were inaugurated."

Q Can you tell us all what that means?

[422] As perhaps one of the authors of that report?

A I didn't write that part. It refers to the situation —the recommendation—there are several related recommendations which state that thrift institutions, mutual savings banks, and especially savings and loan associations with their more restricted powers, that over time may be permitted greater diversification, and that during the interim period during which these powers are acquired there will be some interest rate differentials maintained, with the regulation Q type which you mentioned before, and that after these institutions have been able to adjust or at least the Commission's view on how long it will take them to adjust, that there will be no more differential.

[423] Q In other words, savings banks and savings and loan associations would tend to become more like commercial banks?

A That's—yeah, they would have broader powers, yes, sir.

Q All right, now I am going to refer next to Paragraph 3 on page 33.

MR. REYCRAFT: And I will show that paragraph to Mr. Clark.

Q Dr. Murphy, I show you paragraph number 3 on page 33 of the Hunt Economics Report.

A The one circled?

Q Yes. Would you read that?

A "under specified conditions, savings and loan associations and mutual savings banks be permitted to provide third party payment services, including checking accounts and credit cards, to individuals and non-business entities only" and there is a footnote that says, "See Recommendations 5 and 6 in Section A, 1 and 2 in Section D, 1 in Section E and 1, 2, and 9 in Section H."

Q Could you tell us in less sophisticated language what that—import of that recommendation is?

A The recommendation is to permit thrift institutions to offer checking accounts—type services.

Q So that thrift institutions such as mutual savings banks [424] and savings and loan associations would again become more like commercial banks under—in their powers under this recommendation?

A Yes, under that recommendation, yes, sir.

Q I would like next to refer to paragraph number 1 on page 65 of the Hunt Economics Report.

MR. REYCRAFT: And I will show that to Mr. Clark.

Q Dr. Murphy, will you refer to page 65 of the Hunt Economics Report and read paragraph one which is encircled?

A Yes, "membership in the Federal Reserve System, as defined in this report, be made mandatory for all state chartered commercial banks and for all savings and loan associations and mutual savings banks that offer third party payments services"; there is a footnote, do you want me to read that?

Q Not unless you think it's pertinent.

A I don't know whether it is or not, so I'll read it. "Because of recommendations made in Section H, the recommendation for mandatory membership in the Federal Reserve System entails only two burdens: satisfying the reserve requirements and the purchase of the required amount of stock in the Federal Reserve."

Q Right. Now, again, would you explain to us in your own words what your understanding of that recommendation is?

[425] A That Reserve requirements be made equal for all financial institutions.

Q And what's the purpose of Reserve requirements?

A That's not clear to me.

Q It's not clear to you what—all right.

A But may I state what they are?

Q Sure.

A A Reserve requirement is a specified amount of assets, usually in the form of cash, currency, or deposits held at the Federal Reserve Bank that must be held in proportion to the deposit liabilities of the bank. For members of the Federal Reserve System these are—it must be cash, currency and deposits at the Federal Reserve Bank. Reserve requirements for state non-member banks vary greatly from state to state, in some cases permit holding up correspondent balances to be counted, in some cases count government securities—so this varies greatly from state to state as to what counts.

Q But the recommendation, if implemented, would have the effect again of putting mutual savings banks and savings and loan associations on a more nearly equal basis with commercial banks with respect to their powers and duties, is that correct?

A Their duties, in this case, yes.

Q Their duties?

A Yes.

[426] Q Are you familiar with the Commission's recommendations on taxation of financial institutions?

A Yes, sir.

Q And what was the recommendation with respect to

deposit-type institutions? And I have it here if you would like to look at it. I am sure you know.

A I don't remember it word for word. "Congress enact as part of the legislation authorizing third party payments for mutual savings banks and savings and loan associations a single tax formula applicable to all depositary institutions offering third party payment services with a provision that institutions inaugurating third party payment services and mutual savings banks currently offering third party payment services have a five year transition period to adjust to conform with that single formula." And I did not write that.

Q All right. But you understand, do you, that the effect of this recommendation would be to make the duties of savings type institutions more comparable to those of commercial banks with respect to their taxation?

A Yes, sir, I think that should apply to everybody, not only to just banks.

Q That's a personal observation which doesn't have too much to do with the case.

A Right.

[427] Q All right. Fine. I plan to go over some of these Exhibits with Dr. Murphy and I don't know whether your Honor wants me to start with that now.

THE COURT: Well, if we give him a lead of fifteen minutes to get to the airport because of weather, perhaps we ought not, because I figure it will take him three quarters of an hour to get to Tweed-New Haven from here. There may be some delays in getting to the plane. Why don't we recess now. I am sorry for the court hiatus, but I have court assignments in New Haven tomorrow, motion calendar on the 16th. We will resume on the 17th at 10:30 a.m. Have a good weekend, gentlemen.

(Whereupon, the Court was adjourned at 3:45 p.m.)

[428]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

versus

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 17th, 1972

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[429] Appearances:

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FRANK K. BENTKOVER, Trial Attorney
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UNITED STATES TREASURY DEPARTMENT
15th and Pennsylvania Avenue, N.W.
Washington, D.C.
By: CHARLES H. McENERNEY, JR., Trial Attorney
FORD BARRETT, Trial Attorney

[430] THE COURT: Are the parties ready to proceed?

MR. REYCRAFT: Yes, your Honor.

THE CLERK: You have been sworn, Mr. Murphy. You may resume the stand.

NEIL MURPHY, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. REYCRAFT:

MR. REYCRAFT: I would like to mark for identification two articles written, or co-authored, I should say, by Doctor Murphy which have been referred to previously. One is the Impact of Market Structure on the Price of a Commercial Banking Service, and I ask that that document be marked Defendants' Exhibit No. 56.

(Defendants' Exhibit 56 was marked for Identification.)

MR. REYCRAFT: And a second article, Competition Between Thrift Institutions and Commercial Banks, and I ask that that article be marked Defendants' Exhibit No. 57.

(Defendants' Exhibit 57 was marked for Identification.)

[431] MR. REYCRAFT: And I also ask that an opinion of the Comptroller of the Currency concerning a proposed merger between Wells Fargo Bank and Trust Company and First Western Bank and Trust Company be marked as Defendants' Exhibit 58. This is the opinion which I referred to, your Honor, in which the Comptroller conditioned the merger upon the divestiture of overlapping branches.

(Defendants' Exhibit 58 was marked for Identification.)

Q Doctor Murphy, I show you Defendants' Exhibit for Identification No. 56 and I ask you whether that is a copy of an article which you co-authored?

A Yes, sir.

Q Doctor Murphy, in your opinion, would any—would changes in commuting patterns between New York and Connecticut have any impact on your judgment as to whether SMSAs in Connecticut are relevant banking markets?

A Depend on the data involved.

Q It could, in other words?

A Yes.

Q If the commuting patterns changed, it could have an impact on your judgment.

Do you know what the commuting patterns were in 1966 [432] between the Connecticut SMSAs and New York, that is: Connecticut residents commuting to work in New York?

A What I have examined are the plaintiff's exhibits.

Q I understand you haven't done any independent factual—

A No, sir.

Q —review, but you have relied upon the plaintiff's exhibits?

A Yes, sir.

Q And have you—have you also reviewed the plaintiff's exhibits concerning commuting patterns of New York residents into Connecticut?

A Yes, sir.
Q I think you will find those numbers on P-9.
A Yes, sir.
Q Can you observe any change in commuting patterns between 1966 and 1970 of New York residents into Connecticut?
A I looked at—I'm looking at P-8.
Q I suggest you refer to P-2, as well.
A P-10?
Q Two.
A Two.
Q Just to save a little time, I—I suggest to you that —that P-9 shows that a—the total number of New York [433] State residents employed in Connecticut labor markets according to the exhibit in 1966 was about 7,340. Now, the totals are not shown on the exhibit, but this is my own arithmetic, which is sometimes a little off. That look about right to you?
A Seems an appropriate approximation.
Q And I suggest to you, also that in 19—
MR. CLARK: Your Honor—
MR. REYCRAFT: Excuse me.
MR. CLARK: Excuse me. I think we need a clarification. I don't think Mr. Reycraft correctly stated those numbers.
MR. REYCRAFT: Okay. What are they?
MR. CLARK: Would you restate them?
MR. REYCRAFT: P-9 I get 7,340 New York State residents who worked in Connecticut in 1966, is that right?
MR. CLARK: That's the second column you are talking about?
MR. REYCRAFT: Yes, number living in New York State.
MR. CLARK: Okay.
MR. REYCRAFT: That look about right to you?
MR. CLARK: Approximately, yeah.
[434] Q And I suggest to you that Exhibit P-2—and again, the totals are not shown on P-2—indicates that in 1970 there were 24,893 New York residents who—who worked in Connecticut.

Now, I—it will take you a little while to add those numbers. I'm not asking you to do that, but assume those numbers are approximately correct—do you think that's relevant to a determination as to whether the Norwalk or Stamford SMSAs are changing as banking markets?

A Yes, sir.

Q And what—on what do you base that view?

A Well, I would—commuting patterns would indicate in those SMSAs in the southern part of the state that New York City banks are—I assume for the—part would provide alternatives.

Q And it goes two ways, P-2 indicates—again, I'm suggesting to you from my own arithmetic—that—that Connecticut residents working in New York in 1966 were around 24,893 and in 1970, around 25,770, not a large increase of Connecticut residents going to New York, but a very large increase of New York residents coming to Connecticut, and as of 1970 it suggests a total of about 50,000 workers, heads of households, probably, for the most part, who commute back and forth between New York and Connecticut to jobs.

[435] Now, how does that, in your judgment, impact upon the question of banking markets in Connecticut?

A Well, that would depend on where they're going in terms of commuting patterns, whether they were confined to the—the lower SMSAs, the western, southwestern SMSAs or whether they are commuting into Bridgeport and New Haven and the other SMSAs.

Q Would you take a look at P-2 and the page under Norwalk SMSA?

A Yes, sir.

Q Again, the totals of—of those Connecticut residents working in New York is not shown, but I would say it is around 6,143 out of a total reported employed of around 44,636. Does this seem to you to be a significant number?

A We're looking at the table with the Norwalk SMSA?

Q Yes, sir.

A Total workers—

Q I get 6,143 out of a total of 44,636 whose residences are reported, who places of work are reported, who are indicated to be working in New York. Is that significant in your view?

A What would the percentage be?

Q Well, six out of 44?

A Over 12. For the Norwalk SMSA, I guess that—would be—

[436] Q You would say around 12% would seem to be significant?

A 12 to 15, I guess that—

Q And would it seem significant to you that—that out of 44,600 and some people who—636 people whose places of work are reported that 17,875, according to the exhibit, are employed outside of the SMSA?

A The Norwalk SMSA?

Q If you will refer on the Norwalk chart in P Exhibit 2, about six or seven lines down, it says: outside SMSA total, 17,875. Now, that's out of—the total workers shown be 50,779.

A Right.

Q And I have subtracted from that the bottom line, which is not reported, number four shows zero one seven, and I get 17,875 workers who work—out of the 44,636 reported, who work outside the Norwalk SMSA. Now, assuming those numbers are reasonably accurate, does that have any effect on your judgment as to the Norwalk SMSA as a banking market?

A Yes, it would indicate from Norwalk a substantial amount of commuting and job—job locations outside the SMSA.

Q Would it indicate to you that the Norwalk SMSA could not be described as a banking market in and of itself?

A It would—I haven't—as I say, I haven't examined that—all the figures in that particular SMSA as [437] close as I have in the Bridgeport-New Haven areas, but it would certainly suggest that as a possibility.

Q All right. Do you know—can you tell from looking at the exhibit under Norwalk approximately how many of the people who reside in Norwalk work in the Bridgeport SMSA?

Now, if you look down on the column under—on the right-hand side, from Bridgeport City and down to remainder of Bridgeport SMSA, I get 1,764 of those persons who work in the Bridgeport SMSA.

A Is that 1,000, sir?

Q I get 1,764 and I am not asking you to add those up, but assume those numbers are reasonably accurate, does this indicate some significant influence on those people of competition from Bridgeport banks?

A Well, that's a much smaller proportion, that's approximately—that's little more than 2%.

[438] Q But at least those numbers of people have alternatives among Bridgeport banks, wouldn't you say that's reasonable?

A Yes, sir. Yes, sir.

Q Now, do you know—and I don't—approximately how many people in a household the Census Bureau attributes to each worker; is it three or four people? Do they assume it's a couple plus two children or three children?

A I don't know.

Q But presumably—

A I have no way of knowing whether the commuters are heads of households. It says fourteen year old and over. I have no knowledge of the distribution of this population—

Q Presumably, at least significant number of these people are heads of household and speak for a larger part of the population than just themselves, and I don't think I can ask you to say anymore than that—agree to any more than that. Now, would you look at—both of the Bridgeport numbers on the Norwalk chart: Stamford, city; Darien, town; New Canaan, town; and Greenwich, town. Do you know whether those cities and towns are part of the Stamford SMSA?

A I could check.

Q Would you do that please?

[439] Q I think on the last page of P-2—have you checked whether those four cities and towns are part of the Stamford SMSA?

A I haven't been able to locate—I had a map—

Q It's on the last page, Doctor Murphy, of P-2—I'm wrong about that. It's—I just found it in here. It's on the third page of P-2, the third page shows the SMSAs and it is a two-page description of the towns in the SMSAs. On the second page of the description you will find Stamford SMSA, and on the right-hand side it shows Stamford City,

Darien, Greenwich and New Canaan towns. Do you observe that?

Let me show it to you.

A Okay.

Q You got it? Here it is.

A Stamford.

Q Right.

A Right, okay.

Q So would you agree with me that the—the numbers opposite Stamford, Darien, New Canaan and Greenwich on the Norwalk SMSA data in Plaintiff's Exhibit P-2 shows the places of work of residents of the Norwalk SMSA, is that about right?

A Yes, sir.

Q And I haven't added these numbers up, but it looks like there's about 6,000 people who reside in the Norwalk [440] SMSA who work in the Stamford SMSA. That look about right to you, 3,847, 1,300, 798 and 925, right?

A Yes, sir.

Q Does that indicate to you a—anything significant with respect to the Norwalk SMSA being a self-contained banking market?

A Well, this particular case we have about—something—something greater than 3% of the people in Norwalk working in Stamford.

Q Well, now, if there's 6,000 out of 44,636, who have represented their places of work, that's a little more than that, isn't it?

A Well, I don't know the—the assumption of the—regarding the not reported. I don't know if it's quite accurate to subtract those out. Is there any reason to think that they're distributed any differently than the distribution of people here? I would think the appropriate thing to do if we had no information regarding the distribution would be to subtract it proportionately from all elements throughout the—throughout the table.

Q All I know is what's on this table, and I don't have an opinion on that, but doing it either way, doing it either way, it doesn't change the percentage, does it? If you distribute the 4,000 unreported in the same proportions as they're distributed [441] here, it doesn't change the percentage, does it?

A Well, it would not—it would—it would mean that you wouldn't subtract them all from the base and the percentage would be somewhat lower.

Q Then, you would add to the numbers in the Stamford SMSA so the percentages would be the same, wouldn't they?

A No, I'd subtract them out proportionately throughout the entire list here. It wouldn't change it materially.

Q I don't think you are doing it right. You take those unreported people and you add them throughout the SMSA in the proportions which they're now reported, is that right?

A Well, that would be a—I think you—one way or the other, yes, you subtract.

Q Well, you wouldn't subtract them, 4,000 people, who you are assuming work in the same proportion as the other distribution, so you add them, right?

A Well, you would add them or subtract them proportionately.

Q Well, okay. It seems pretty clear to me that you add them. But assuming that there are approximately 6,000 out of 44,600 reported, does that indicate anything to you with respect to the Norwalk SMSA as a banking market?

A Well, it would indicate that—the percentage would go up some. It would indicate some amount of commuting outside [442] the Stamford SMSA or the Norwalk SMSA and be—be—

Q It indicates quite a lot of competition for business of people who reside in the Norwalk SMSA from banks outside, including Bridgeport, including Stamford SMSA and including New York City, doesn't it?

A Yes, in this case for Norwalk, yes, sir.

Q Will you turn the page to Stamford SMSA?

Again, Doctor Murphy, I would have to ask that you rely for the moment on my arithmetic. I get—starting with the Yonkers-Mount Vernon-New Rochelle and so forth, and going down to Rockland Counties or going down to Nassau and Suffolk Counties, New York, I get over 16,000 residents of the Stamford SMSA who work in New York. Now, you will observe that the exhibit shows that 1,475 work in Yongers, Mount Vernon, New Rochelle, White Plains cities, that the remainder, West-

chester County, reports 2,655, 253 in the Bronx, 10,332 in New York City, 368 in Kings County, another 1,219 in the remainder of New York City, 66 in Rockland County and 181 in Nassau and Suffolk Counties.

So assuming that I'm within shooting range when I say that there are about 16,368 of the 79,028 persons who reported where they worked who lived in the Stamford SMSA, does this indicate to you with respect to the Stamford SMSA being a banking market?

A Well, it indicates—what was the number again?

[443] 16,000?

Q I get 16,368, and I think I may have left out Nassau and Suffolk County, so it may be a little more, say, 16,000 to be conservative.

A Well, it appears that this would be about, oh, near 20% or—20% of the SMSA workers residing—

Q Wouldn't that suggest to you that banks in Stamford are subject to pretty substantial competition from New York City banks?

A These commuting patterns, yeah, generate alternatives, yes, sir.

Q Now, I have asked you earlier whether you have had a chance to look at the trends in commuting patterns of persons who live in New York and work in Connecticut, and I have suggested to you that Exhibit P-9 indicates that in 1966 7,340 New York residents worked in Connecticut, that as of 1970, according to the government's numbers, 24,893 New York residents work in Connecticut.

So wouldn't you agree that these numbers indicate that there is a substantial trend toward New York residents working in Connecticut?

A Yeah, there's been a large percentage increase.

Q Looks about 900% increase to me, doesn't it— that's wrong, excuse me. That's about between 300 and 350%

[444] increase?

A About triple.

Q The Norwalk numbers look to me like there's been about a 900% increase between 1966 and 1970, 710 in 1966 and 6,143 in 1970, don't you think that's pretty significant?

A Well, that's—I'm not—yeah—that is a significant increase, but I'm not sure as to the comparability between the different data sources.

Q Well, I'm not, either, but they are government exhibits, one comes from the Connecticut Labor Department and the other comes from the Bureau of Census, so where's the Connecticut Labor Department get its numbers, do you know?

A Either from their own—I'm not sure.

Q Maybe from the census, or do they generate them on their own?

A I would imagine it would be something—either their own surveys or federal labor statistics, I would imagine their own surveys.

Q Well, you and I, I think, at the moment have no choice but to rely on the accuracy of the government exhibits.

Stamford, if you refer to P-9, shows 5,250 New York residents who came into Connecticut to work there in 1966, and P-2, as we have just discussed, indicates six thousand —16,368 came in in 1970, which is over 300%, as I calculate it, [445] in four years, and would agree that that's pretty substantial?

A Yes, sir; I want to get it clear as to what we're comparing here.

Q Okay. P-9 and P-2.

A P-2.

Q The number on P-9 is opposite Stamford, 5,250, do you have that number?

A Yeah, I have the number, I just—that refers to people living in New York State.

Q The heading of the exhibit is Employment—

A Yeah.

Q —in Connecticut Labor Market Areas, number and percent of New York State Residents.

A Right.

Q Right?

A Right.

Q Then, on Exhibit—on P-2, the Department of Commerce figures, if you look under Norwalk, then, I have asked you to—I have told you I did some arithmetic and you can do your own if you like—excuse me—I just referred to Stamford—look under the Stamford exhibit, which shows, according to my calculations, 16,368 people who live in New York and work in the Stamford SMSA.

A Doesn't this—isn't the heading: Place of Work?

[446] Q Okay, this is—this is okay, you are right, these are people who work in—who—who work in New York who live in Stamford.

A That's right.

Q Okay. That's right. The other—the people—

A So P-9 and P- — and this page are not comparable.

Q Okay. That's right. The comparable numbers are in the New York exhibits—New York attachments which are—which follow the Stamford and Norwalk SMSA. The numbers for New York—

A Bronx, I have this—the only listed SMSA for the Bronx County is Stamford.

Q All right. What does it show for the Bronx?

A It says 2,457 out of 512,000.

Q All right. How about for New York City, what does it show?

A The New York City, Kings County does not list—

Q New York County, which is New York City.

A Does it list Stamford and Norwalk—

Q Okay, how many people—who—who live in New York County work in Stamford?

A 3,227.

Q And in Norwalk?

A It shows 1,966.

[447] Q Okay. Turn the page to Queens County. What does it show for Stamford?

A It shows 4,464.

Q All right. So these exhibits show, do they not, that there's substantial commuting patterns back and forth between New York and Connecticut?

A Well, it shows—make these calculations here, we have Stamford—

Q Let me show you P-8. This shows—the heading is: Residents of New York City SMSA who work in Connecticut, right?

A Right.

Q So that gets us up to the second column—shows from the Bronx, 2,457, right? Up here?

A That's right.

Q It shows from Nassau County 4,979, it shows from New York County 5,193, it shows from Queens County 4,464, and it shows from Westchester 7,800, is that right?

A Right.

Q Which I add up to about close to 25,000?

A Right.

Q Okay. Now, would you agree that that has—that number of commuters coming into Connecticut would be significant in determining whether the—whether Connecticut banks receive [448] any competition from New York banks, and whether these people have choices in New York and Connecticut both?

A Well, these individuals, this is a—we'd have to look at it as a proportion and which particular SMSAs. It appears to me that—on the basis of these exhibits that almost all the interaction takes place between Stamford, Norwalk and the New York City area.

Q But it is your opinion that there is substantial interaction between those areas?

A Yes, sir.

Q So doesn't that indicate to you that although Stamford and Norwalk are SMSAs, that's a long way from being the end of the question as far as determining banking markets is concerned?

A Yes, sir.

Q Would it indicate to you that Stamford and Norwalk might be part of the same banking market? The two SMSAs?

A That could be.

Q And would it indicate to you, also, that New York might be part of that same banking market?

A Yes.

Q It is a matter of degree, I understand?

A It is a matter of degree, but I would—for those areas I would—yes, there is more commuting in those southwestern [449] SMSAs.

Q Doctor Murphy, would you refer to P-15? Do you have that exhibit?

A Yes, sir.

Q Now, P-15 is based upon the labor market—the Bridgeport labor market area, isn't that right?

A Yes, sir.

Q I think that's the hearing?

A Yes.

Q And is—are labor market areas substantially co-

terminous with SMSAs—I believe footnote 2 says that Bridgeport labor market area coincides with Bridgeport SMSA, is that right?

A Yes.

Q So can you draw any inference from this Exhibit P-15 that the Bridgeport SMSA is a banking market? This exhibit doesn't show it, does it?

A No, this just—this exhibit shows the distribution and trends in employment.

Q For example, the exhibit lists employment in ordnance, food, apparel, printing, rubber, stone and clay and glass and so forth, and it also—

A Description of the economic base of the labor market area.

[450] Q Right, and it shows on the second page employment and finance, insurance and real estate, no inference can be drawn from this exhibit, can it, with respect to whether the Bridgeport labor market area is a banking market?

A To the—well, to the extent that the labor market area reflects the patterns of employment. The definition—I'm not quite sure how the labor market areas are defined.

Q Here's the similar—as the Bridgeport SMSA.

A I'm not sure of the criteria. It turned out that way, it is conceivable that it may vary from area to area, as to whether it is completely coterminous.

Q Well, for example, employment in the electrical equipment industry is shown on one of the lines of page—of P-15, now, that—no inference can be drawn whatever, can it, that the Bridgeport labor market area or SMSA is a relevant market for electrical equipment, can it?

A No.

Q There is strictly a labor distribution chart, and it has no implication whatever for either electrical equipment markets or banking markets, does it?

A Those numbers there do—no. However, if the definition of the labor market includes commuting patterns, that would lead us to believe that these would generate alternatives for customers, then I would say; yes, but these figures themselves, [451] no.

Q Would the same apply to P-16, which appears to be the same kind of information for New Haven? And foot-

note 2 says: New Haven labor market area includes the New Haven SMSA, plus Madison, so would you reach the conclusion with respect to P-16?

A Yes.

Q Now will you refer to P-17? The footnote—a footnote to that exhibit gives as a source of the 1947 and 1956 data a telephone conversation of July 31 of 1972. Were you a party to that telephone conversation?

A No, I was not.

Q And you don't know—you have no personal knowledge that you could testify to as to whether those numbers are or are not correct, do you?

A No.

Q And you did not prepare that exhibit, did you?

A No.

Q Now referring to P-23, do you have any personal knowledge of the source of the data in this exhibit? It is shown to be Clinton Bogart Associates, who are said to be consulting engineers. Do you have any knowledge of how they derive any of their data?

A No, I don't.

[452] Q Or they methodology or anything else?

A No, I'm not.

Q Incidentally, are any of the government exhibits exhibits which were prepared under your direction or supervision?

A No, sir. They're the kind of things—kinds of things, especially with respect to the banking data, that we would normally use.

Q But you personally can't testify to their accuracy or completeness?

A No.

Q Doctor Murphy, will you refer to P-63? You see that exhibit?

A Yes, sir. Yes, sir.

Q Once again, you did not prepare this exhibit or—nor was it prepared under your direction or supervision, was it?

A No, sir.

Q Will you read the title?

A Commercial Banks Operating in Orange, Milford, Ansonia and Derby, in parentheses, four-town area.

Q Does this indicate to you banks which do business in that area?

A Well, my interpretation is that—having looked at the exhibit—is that it's banks which have offices in that area.

[453] Q Right. It does not include all banks who operate in that area, does it?

A I don't know exactly what operate means.

Q Well, I don't, either, but if it means do business, it does not include all banks that do business in that area?

A I don't know.

Q Well, would you be surprised if all the business done in that four-town area was done by banks which had offices there?

A I would—would think that there would be some outside—some outside business, yeah.

Q So that the percentages which are shown, you couldn't testify that they accurately reflect the percentages of business, banking business, which is done in that area which are done by the banks indicated, could you?

A It says—I interpret that as indicating the share of deposits held by the banks which operate offices in the area.

Q All right. But it—but it does not include—if there is any—business from banks which have offices outside the area, right?

A It does not.

Q And you have—you have observed commuting paterns in some of the government exhibits from Orange, Milford, Ansonia and Derby, and would you think rather strongly that many of these [454] people do business with banks outside—who don't have offices in that four-town area?

A Well, they do business—yeah—those exhibits, as I recall, indicated a—a—patterns—office by office patterns of business in surrounding towns to a substantial degree.

Q So that—

A You will recall that we—we—we stated that this area was somewhat doubtful, and—

Q I'm not talking about that point at the moment. At the moment my point—

MR. CLARK: Your Honor, I would request that he permit the witness to complete his answer.

THE COURT: Well, I'm not sure that the original question is being answered, so would you read back the original question?

(Question read.)

THE COURT: I think the answer could be a yes or no or with a modification, I think there has been a—an opinion going into other areas beyond the scope of your question. At least that's the way it sounded to me, but I'll allow the witness to answer that question.

A The adjoining towns contains offices of the defendant banks, and essentially there may be some other banks [455] located there, but the banks listed here are represented in these other towns, also, so it is difficult to say if we change the line, so to speak, to make it include one, I don't think that the percentages would change too much. The importance of defendant banks in the area.

Q Well, this exhibit does not indicate, does it, the percentage of the deposits which originate in the four-town area which are held by the defendant banks?

A No.

Q Okay. Will you refer to P-64? And again, the title of that exhibit is: Commercial Banks Operating in the Bridgeport SMSA. Now, does this—this exhibit also does not include all deposits which originate in the SMSA, does it?

A No, it includes—it includes the banks that operate offices in the area.

Q So that the heading on the column to the far right, percentage of SMSA deposits, is not accurate, is it?

A Percentage of SMSA deposits of banks with offices in the SMSA would be more complete.

Q As stated, it is not accurate, is it?

A It is not complete.

Q It is not accurate?

MR. CLARK: Your Honor, he's just arguing with the witness, I think—I object to that.

[456] THE COURT: Yes.

Q All right. Doctor Murphy, the exhibit doesn't show total deposits of the banks involved, either, does it?

A It shows—the second column over is deposits in mils.

Q Are those total deposits of the banks involved?

A No. It shows their deposits originating in those offices.

Q So that if they have offices outside of that area, those deposits are not indicated, right?

A That's correct.

Q Will you refer to P-64 and—does that have the same—the same—

A We were talking about P-64.

Q You are right.

Q P-65.

A Yes, sir.

Q P-65 is entitled: Commercial Banks Operating in Bridgeport SMSA, and a footnote indicates that this is 1970 data, is that right?

A Yes, sir.

Q And again, would you agree that the percentages shown on the—in the right-hand column, percentage of total SMSA deposits, does not represent the percentage of all deposits which originate in the SMSA as of the date shown?

[457] A It shows the percentage of the deposits held in offices by the banks listed.

Q Right. And it does not show under the column headed: Total SMSA Deposits—it does not show all deposits of all financial institutions—

A Of the banks.

Q —even of all financial institutions—of the Bridgeport SMSA, does it?

A Just—no, it shows the banks that are located within the SMSA, for example,—well, you have got some banks that have branches that are headquartered outside the SMSA, and just shows their offices within the—within the metropolitan area.

Q All right. Take, for example, the bank at the bottom of the list, Connecticut Bank and Trust Company, the exhibit indicates that as of 1970 it has less

than a hundred thousand dollars of deposits originating in the Bridgeport SMSA. Do you think that this is a fair approximation of Connecticut Bank and Trust Company's competitive strength in the Bridgeport SMSA?

A I think—it shows their market share, we would hope that that—because it entered fairly recently, that their market share would increase and concentration levels would be—would be brought down.

Q Isn't their lending limit the largest of any banks listed on the exhibit?

[458] A I would—would assume so, yes.

Q And the exhibit does not show the deposits of savings banks in the area, does it not?

A No, it does not.

Q Although the total SMSA deposits column appears to include savings deposits held by commercial banks, does it not?

A Yes.

Q And would you refer to P-66? Again, this exhibit appears to show only accounts held by banks with offices in the Bridgeport SMSA, is that right? I don't know whether that's right or not.

A I think—yes. I think it is right. It is—it is a similar table, except it is denominated by number of accounts rather than dollar volume.

[459] Q So, your understanding of the table is that if there are accounts held by Bridgeport—accounts of Bridgeport residents held by—out of SMSA banks, they would not be included in this table?

A Excuse me, again, would you repeat—accounts of—

Q I am trying to understand the Exhibit if—in your—you are the only witness I can ask, I think. Sorry, I know you didn't prepare 'em. Would I be correct in assuming that if Bridgeport residents have accounts in banks which do not have offices in the Bridgeport SMSA they would not be included in these numbers in P-66?

A That is correct, yes.

Q So, we don't know how much banking business is done in the Bridgeport SMSA by out of area banks, at least from this Exhibit?

A No.

Q And can the same things be said about P-67 and P-68 which are for New Haven? They're for 1954 and 1970 in New Haven.

A Well, that—those are similar. They indicate a—commercial bank's operating offices in the market. Shares are determined by percentage of—percentage of deposits held in those offices.

Q And referring to P-68, for example, and referring to the Union Trust Company, which is shown to have total SMSA deposits of 82.4 million, in your opinion doesn't this indicate [460] a—in a fair way, the competitive relationship of Union Trust with First New Haven?

A It shows their share of deposits in the—held in that market area.

Q Do you know how Union Trust Company's lending limit compares to First New Haven?

A No, I don't.

THE COURT: What do you mean by a lending limit?

MR. REYCRAFT: Your Honor, banks generally can lend up to ten per cent of their capital surplus in undivided profits to any single customer, so that, for example, if a bank had capital of, as I described it, of forty million dollars, it could lend up to four million dollars to any one customer; so that a bank with seventy million of capital could lend seven million to one customer. And with larger customers that becomes important—

THE COURT: Would the limit include branches or just each office?

MR. REYCRAFT: The total—the total bank's lending limit is available at any office; for example, which is my point here, that Union Trust Company which has much larger assets than First New Haven, is shown by this table to have 15.7 per cent deposits [461] compared to a large amount for First New Haven, but it has a larger lending limit than First New Haven and I am arguing that it's a stronger competitor than the table would seem to suggest.

THE COURT: Well, do you agree with that?

MR. REYCRAFT: Well, I would—to qualify that by

stating that we have indicated in it earlier that for larger business customers the local area is not—is not the determinant, and we don't regard that as being an important—because that market—the number—the amounts of alternatives for larger businesses are sufficient, that—that reducing the number of participants in that market by one or increasing it by one doesn't really effect it that much. You would have to aggregate the entire—every bank in the state of Connecticut to be into one bank to be the size of some of the New York banks.

THE COURT: You probably have answered this, but let me ask you right now: if the large firm, big business man, is not a category we are particularly concerned with, what other category are you concerned with?

MR. REYCRAFT: Well, we're generally concerned with smaller businessmen and the individual customer.

[462] BY MR. REYCRAFT:

Q Dr. Murphy, for the small businessman, you have testified that in your opinion there is no significant elimination of direct competition as a result of this merger, other than the four-town area, right?

A Yes.

Q So he won't be deprived of any significant alternative by the merger, right?

A Current.

Q Now, with respect—let's talk about the small depositor. How would the small depositor, who I believe you testified has his choices confined largely to his local area, how would he be adversely affected by this proposed merger, and let's now talk about what might happen a year from now, or five years from now about this proposed merger?

MR. CLARK: Your Honor, I don't see how he can talk about this proposed merger.

THE COURT: I think Counsel may limit his question in time. Now, if on re-direct you want to expand the time he will element with respect to obtaining an opinion on this point. You may, or Counsel may wish to

proceed, but I would like to know what his opinion is as of today, next year, five years from now. So the objection is overruled.

[463] A Repeat the question.

(Question repeated.)

A We have already—you asked me last week whether this is a market extension case and I indicated it was.

Q Well,—right. I understand that you are telling me indirectly, Dr. Murphy, that he would not be adversely affected. Am I correct about that?

A I stated it's a market extension case, and directly.

Q I think the Court—

THE COURT: Just a minute—go ahead.

A Directly. No, right at the—but we're maintaining that's not the significant point.

Q Your answer is now at the present time, no, he would not be adversely affected.

A At—yes, that is right, subject to the qualifications that we do not—I don't—we don't think that's the important issue in this case.

Q But your answer is yes?

A Yes.

Q That he is not adversely affected now?

A Yes.

[464] Q How would the small borrower be adversely affected by merger, if he would be, now?

A Subject to the same qualifications, we have already indicated it is a market extension—consider it as a market extension case.

THE COURT: Excuse me, let's get—let's get that square away, at least in my mind, because certainly you gentlemen know what you are talking about; but what's the definition of a market extension case?

THE WITNESS: Well, what—

THE COURT: What do you mean by that?

THE WITNESS: Well, we mean that the issue in a case where a bank is attempting to extend its market to some other area in which it presently doesn't operate is potential competition, and the issue is whether the method

of entry has desirable or undesirable competitive consequences.

THE COURT: Do you agree with that, Mr. Clark? I mean, is that what this case is all about?

MR. CLARK: May I have him read it back?

(Answer read.)

MR. CLARK: We have alleged two effects, your Honor, and one is a present effect. I think that Doctor Murphy was thinking about the market extension [465] aspects, obviously, we are alleging an elimination of competition in this intermediate overlap area, this is an immediate effect. Furthermore—

THE COURT: Well, that's what's on my mind.

MR. CLARK: Yes.

THE COURT: And I was wondering, have we now limited the latter?

MR. CLARK: No, your Honor.

THE COURT: Well, has the expert eliminated it, at least in his mind? I'm a little bit confused here.

THE WITNESS: I thought that counsel had—had stated: disregard the four-town area.

MR. REYCRAFT: I did.

THE WITNESS: Okay. So I was—testifying with respect—eliminated the—in his question, he eliminated—

MR. REYCRAFT: Shall I ask my question again, your Honor?

THE COURT: I think it is starting to become clear, in other words, the expert has not eliminated that, but the question eliminates that point, is that it?

MR. REYCRAFT: Yes, sir, your Honor.

THE COURT: All right. Now I'm clear. You may [466] follow through on this.

Q Doctor Murphy, assuming—disregard the four-town area for the moment—is it your opinion that the proposed merger would have any adverse effect on small borrowers in New Haven at the present time?

A At the present time, no.

Q And, also, would your answer be the same for small depositors in New Haven?

A Yes, give—yes.

Q And would your answer be the same for small businessmen in New Haven?

A Borrowers as opposed—yes. Yeah.

Q And would your answer be the same for small depositors in Bridgeport?

A Yes.

Q And small borrowers in Bridgeport?

A Yes.

Q And small businessmen in Bridgeport?

A Yes. Subject, of course, that the issue, as I see it, is one of how—how the entry takes place. The impact on potential competition.

Q All right, Doctor Murphy, referring again to P-68, can you tell me whether, in your opinion, it is important to a small depositor what size the bank is in which he makes his [467] deposit?

THE COURT: Excuse me.

You may proceed.

Q Would you—

(Question read.)

A Subject to the insurance limitation and the kinds of services available that may vary by size, I suppose there's not much difference.

Q Let's—let's just talk about savings deposit for the moment. What—what is the federal insurance applicable to savings deposits?

A $20,000.00.

Q Are all—do you know whether all the banks on—listed on P-68 have that insurance?

A I don't know for sure.

Q The national banks only?

A The national banks do for sure, and I don't know, but I—the number of uninsured banks in the country and in the state are not significant.

Q You assume that you—

A I assume, then, that the Union Trust and the other banks and Connecticut Bank and Trust—I know Connecticut Bank and Trust is a member of the Federal Reserve System, so they would have it.

[468] Q And, therefore, is a member of the FDIC?

A Yes, sir.

Q And Union Trust Company you believe is—

A I believe is insured, yes.

Q Right. So that for any—any savings depositor who wanted to—to put in a savings account $20,000.00 or less, it would be of no importance to him, really, as to the size of the bank in which he put that deposit, is that right?

A The size. Just the size, no.

Q No. Just the size would be irrelevant.

All right. How about someone who wants to borrow money for a car or a television set, for example, refrigerator, of what importance is it to that person as to what size the bank is from which he borrows?

A He'd be interested in the service and the rates and the convenience. Only to the extent that was correlated with size, would size be of importance.

Q If a larger bank was able to give him a lower rate, he'd be interested in that, right?

A Yes.

Q But otherwise—

A Or a higher rate.

Q If they were charging a higher rate—

A He'd be interested in that, too.

[469] Q He'd be disinclined to do business with a larger bank? So that it is the level of rates rather than the size of the bank which the borrower would be interested in, is that right?

A And the convenience factors and so forth.

Q If the office is nearby?

A Yes, sir.

Q He's a lot more interested in the proximity to the office than he is in the size of the bank, if I understood your earlier testimony?

A Yes.

Q Now, taking that small depositor—well, under $20,000.00 is not so small—but taking the depositor who is interested in saving $20,000.00 or less, he has more choices in New Haven than are shown on P-68, doesn't he?

A In terms of—you mean he has more choices?

Q Savings banks.

A There are savings banks, yes.

Q And for borrowers who want to make personal loan, there are more choices than shown on P-68 in New Haven, are there not?

A Including savings banks or—

Q Small loan companies, automobile finance companies.

A I assume they operate in Bridgeport.

Q And the same thing would be true of the exhibits which [470] are based on the Bridgeport SMSA? Same questions with respect to the importance to the borrowers, depositors of the size of banks, would you give the same answers if I ask you the same questions?

A Yes. I would say that the—my—I have examined some of the office location data, at least the number of offices for savings banks as opposed to commercial banks, and at least on a statewide level, they have a greater number of offices to the extent that—which we would—I would infer from that that there's more convenience in terms of location on the average for a commercial bank than a savings bank.

Q Because they have more offices?

A More offices.

Q All right. Now, at what—at the level at which we have been discussing, that is: the depositor, the small borrower, the small businessman, lending limits are not of any significance, are they?

A Wouldn't think so.

Q And at the point at which lending limits become significant, would you agree that a lot more alternatives are available to borrowers in those categories?

A Yes. Especially if we're talking about lending limits for the banks represented here. If they can't—the lending limit for the banks, say, operating currently in the [471] SMSA of New Haven, if that were a significant factor, there would be alternative available elsewhere.

Q If the capital of the First New Haven Bank is around 30 million and its lending limit is around $3 million, which is probably far close, would you think

that borowers in that category would have a lot of alternatives available to them?

A Yes, beyond.

Q Outside of New Haven?

A Beyond, yes.

Q And even outside of Connecticut, right?

A Probably.

Q They could go to Connecticut—I mean Hartford or New York or Boston? They'd be welcome, wouldn't they, in the banks there?

A I don't know what their credit rating would be, I couldn't tell whether they'd be welcome or not.

Q Business of that size is of interest to these banks in New York City and Boston, assuming that the credit is satisfactory?

A I should think so, right.

Q Doctor Murphy, will you refer to P-70? You have that exhibit?

A Yes, sir.

Q The far right-hand column, which is headed Share Total State Deposits.

[472] Now, that does not include, if I understand it correctly, deposits held by any bank with offices outside of Connecticut, is that right?

A That's right.

Q So that that column, to be stated accurately, should be: share of total deposits held by banks with offices in Connecticut, is that right?

A Yes.

Q Doctor Murphy, will you refer to P-72?

A Yes.

Q Now, look under Hartford National Bank, this is an exhibit which is headed: Mergers and Consolidations by Commercial Banks, 1955-1972. Do you know—

THE COURT: Excuse me. May I have that exhibit? What is it?

MR. REYCRAFT: 72. P-72.

THE COURT: Go ahead.

Q Will you refer to the column under Hartford National Bank and refer to the extreme right-hand column?

A Yes, sir.

Q You know, do you not, when the Bank Merger Act was passed?

A 1960.

Q And would you agree with me that all of the [473] acquisitions under Hartford National Bank from 1960 down, the next four, were subject to the reporting and application requirements of the Bank Merger Act?

A Yes.

Q And under this act can you—you have, I know, been employed, as you testified, by the Federal Deposit Insurance Corporation, and you have reviewed these applications and you have written reports on them; will you tell me what happens when a Bank Merger Act application is filed by a national bank such as Hartford National Bank?

A Well, I'm not exactly sure of the steps within the —the relevant agency to make the decision is the Comptroller of the Currency since the resulting bank is a national bank. The other agencies—the law states that the other agencies, plus the Justice Department, render an advisory opinion, so the—the Federal Deposit Insurance Corporation, the board of governors of the Federal Reserve System, the Justice Department would file advisory opinions on the competitive effects of the merger.

At that time, having received and done his own staff work, the Comptroller would then render a decision.

Q And then the Department of Justice has 30 days within which to file suit, is that right?

A Yes.

[474] Q So would you agree with me that for those mergers indicated from seven 1960 down to ten, 37, these were reviewed by the Department of Justice and it had the opportunity to file suit if it desired to do so?

A I would—generally, I don't—I don't remember the exact date of the passage of the Bank Merger Act, and I am not sure about the date in 1960.

Q But you are sure from '64 on?

A From '64 on they were reviewed, went through the review processes.

Q Right, and under Connecticut Bank and Trust Company, would you agree that the acquisitions of from

8/27/62, the five under that, one 8/5/63, 12/29/69, 11/15/71 and 12/13/71, all were reviewed by the Department of Justice and that it had the opportunity to file suit if it desired to do so?

A Yes.

Q Now, in your judgment, did those acquisitions, the four—at least three, maybe four, by Hartford National—and the five by Connecticut Bank and Trust Company have any impact on banking concentration in the State of Connecticut?

A In the entire state?

Q Yes, sir.

A It would have—well, the Hartford National Bank would have grown by the size of the deposits or deposits that stayed [475] with the—with the bank, and the same thing for Connecticut Bank and Trust, and whether those four specifically in that particular time period had a—had an effect would depend upon the rate of growth of the other banks in the state. I assume that it increased—I believe we have an exhibit on that, if you can—if you refer to it.

Q When you say "we", you mean the Antitrust Division?

A Antitrust Division, there is an exhibit. I won't give it any—yes. Exhibit P-91. Shows that over the approximate period you talked about, the shares of at least the five largest banks increased by 5.4%.

Q It looks to me like a lot of that was accounted for by these nine acquisitions that were reviewed by the Department of Justice, doesn't it to you?

A That—I haven't checked the numbers out. I—

Q Well, there are nine mergers?

A Yeah, there are nine mergers, and I don't—some of them—for example, we have—one is a two million dollar bank, well—well, those nine mergers figured into the—I'm not sure, I'd have to calculate those to determine what proportion would be determined by that. I really don't know.

Q Would you turn to the next page under Union Trust Company?

A Yes.

[476] Q There was a pretty substantial merger in 1969, wasn't there?

A Yes, sir.

Q And did that account in part for the—what you and the government describe as an increase in concentration in Connecticut?

A Yes, I would—

Q And that would have been reviewed under the Bank Merger Act by the Department of Justice, would it not?

A Yes.

Q Who in your—

THE COURT: I just assume by the tone of your question that they were not challenged by the government?

MR. REYCRAFT: Yes, that's right. That's right.

Q Who, in your opinion, Doctor Murphy, are the two most likely entrants among banks in Connecticut into any market in the state? I assume you will say the Hartford National and Connecticut Bank and Trust, am I right about that?

A I would say that they are among the—yeah.

Q Based on your testimony earlier that size is maybe the most significant factor, you would say that they were probably the two most likely entrants?

A Probably. Although some of the other banks have a— [477] acquisition and expansion history has been—has been as much or greater than the—not so much acquisition, but their expansion de novo branching—

Q Look at P-72 and tell me who has more mergers than Hartford National and Conecticut Bank and Trust?

A Well, I'm looking at—you mean combined or—

Q Well, look at P-72, it's a government exhibit.

A Yeah, I'm looking at P-Seventy—

Q Isn't it a fact that Hartford National and Connecticut Bank and Trust have significantly more acquisitions than any other bank on that list?

A Let me just check. Yes, as—depending on whether—considering Union Trust as—just since its inception, those combined banks prior to the—prior to the consoli-

dation had a—betwen them had approximately the same number, I believe.

Q About the same as what? CB&T?

A Right, right. P-70 shows that the combined banks over the period had 11. I don't—

Q All right. Then, maybe they're the three most likely entrants?

A Yeah.

Q Would you agree with that?

A They're among the three, yeah. Well, among the three, they are the three.

[478] Q Well, if your theory that you have been testifying about is consistent, why weren't they required to enter these markets by de novo branching rather than by acquisitions?

A I don't—I'm not familiar with the particular cases involved and why the Justice—I have no knowledge as to why the Justice Department sues in one case or another, or what the decision criteria are. I can't testify to that, I'm afraid.

Q Well, let's take New Haven, for example, where Hartford National Bank acquired General Bank and Trust Company in 1970. If I understand your testimony correctly, Hartford National could have formed a holding company and applied for a newly chartered bank and entered New Haven without eliminating that alternative, am I correct?

A That's a possibility, yes.

Q It is—at least it's possible for them as it is for Connecticut National and First New Haven, right?

A Yes.

Q And would the same thing apply to Connecticut Bank and Trust Company?

A Yes.

Q So that if each of those banks entered New Haven by the form in which the government has suggested, there would be two more alternatives available in New Haven now, wouldn't there?

A Yes.

[479] Q And I take it you don't know why they were permitted to enter by merger rather than being forced to go de novo?

MR. CLARK: Your Honor, I object to the questions regarding the Department of Justice.

THE COURT: Not only has it already been answered, he just said he's not privy to the thinking in Washington as to why they bring one suit and not another.

Two, he said, "I haven't made a study of it," and I suppose—

MR. REYCRAFT: I'll withdraw the question.

THE COURT: It's just—you are going to get the same answers.

MR. REYCRAFT: I agree.

THE COURT: Maybe this is a good opportunity to give the court reporter a recess.

(Recess taken.)

[480] MR. CLARK: Your Honor.

THE COURT: Yes?

MR. CLARK: May I make a statement at the outset regarding the question that arose just before the recess regarding the Department of Justice policies on these mergers, the matter was brought up before Doctor Murphy and, of course, we agreed that he is not privy to Department of Justice position, but I think at this point it would be well to—for me to clarify the record on that point.

THE COURT: Before I comment, why don't you put on the record what you would like to put on.

MR. CLARK: Yes, sir.

THE COURT: Go ahead.

MR. CLARK: These mergers which Mr. Reycraft referred to is obviously mergers between large—two of the largest banks in the state and small banks operating in local markets, New Haven, Bridgeport. These banks had small market shares, they were what is commonly referred to and what Doctor Murphy had referred to as toehold or foothold acquisitions means by which these large banks enter the market, and presumably will exercise their—considerable competitive influence to concentrate the market.

[481] I think that should be clarified, and that is our position, your Honor.

THE COURT: You may proceed, Mr. Reycraft.

Q Doctor Murphy, it is a fact, is it not, that if Hartford National Bank had come into New Haven by the de novo chartering route rather than by acquiring General Bank and Trust Company in October of 1970, there would have been another alternative source of banking service for consumers in New Haven, right?

A That's a fact, yes.

Q And if Connecticut Bank and Trust Company had come into New Haven by the de novo chartering route rather than by the acquisition of Tradesmen's National Bank of New Haven in 1969, there would have been yet another banking alternative available to consumers in New Haven, correct?

A That's a fact, yes.

Q And do you know whether Connecticut Bank and Trust Company has come into Bridgeport by acquisition?

A Excuse me, Connecticut Bank and Trust?

Q Yes.

A Entering into—

Q Bridgeport.

A Bridgeport. Yes. They acquired the Columbus Industrial Bank.

Q All right. That was in 1971, right?

[482] A Yes, sir.

THE COURT: I'm not quite sure, as I look down at this chart, what the zero means under total deposits for the Columbus Industrial Bank, what's the significance of that?

MR. REYCRAFT: I'm just wondering the same thing, your Honor.

THE COURT: Is it a defunct bank?

MR. REYCRAFT: It's a government exhibit, so I don't really know.

MR. CLARK: Well, industrial banks are substantially different from commercial banks, they operate in very circumscribed ways, I'm not fully familiar with their operations. They are—they're not commercial banks in that sense, the reports deposits, according to this source, which is FDIC, I believe, were zero. Now, they may have deposits of a certain type, but, anyway, it is a small one-office operation that did not really resemble a commercial

bank in that sense, but it was converted into a—into a commercial bank, so to speak, through this acquisition by Connecticut Bank and Trust.

MR. REYCRAFT: Your Honor, I believe it had deposits, but I think that the deposits on the exhibit [483] are limited to IPC deposits which are of banks under the FDIC. The source indicates that it is FDIC data, and it may not include deposits held by an industrial bank. But I'm sure it had some deposits, and I don't know what they were. We'll have that—we'll put that information in the record, however, at a later date.

THE COURT: Is there any code or way an expert could tell by the name of the bank if it is a commercial bank or an industrial bank or a savings bank? Or is it fortuitous? In other words, I know there's a New Haven Savings Bank, but is there some law that says that if it is a national bank, it must have the word "national" in its title and if it is a savings bank, it just have the word "savings"?

MR. REYCRAFT: If it's a national bank, it must have the word "national" or "NA", which means national association, in its title, so no bank can use national bank which is not a part of the national banking system.

As far as state banks are concerned, I don't know of any limitation on the names. For example—well, I think that industrial bank probably under Connecticut law—and I should defer to my friends here [484] who are members of the bar here—could not be used by a bank which is a general commercial bank, but which is organized under the industrial banking section of the Connecticut banking law.

THE COURT: Does the word "trust" in the title have any particular significance?

MR. REYCRAFT: It means that it operates a trust business, but, for example, Lincoln Bank and Trust Company is a general commercial bank, or was a general commercial bank, which had a commercial banking and a trust business, both state banks and national banks have trust powers, whether or not they had the name—word "trust" in their title.

For example, First New Haven Bank has a trust department and Connecticut National has a trust depart-

ment, and a bank may wish to emphasize the trust aspect of its business by putting it in its name.

THE COURT: But could a bank have a branch called —headquartered in Devon called Devon Bank?

MR. REYCRAFT: Yes, sir.

THE COURT: So you don't have to put in the title that it is a savings bank—let me start another way.

If you saw the name of a bank as Devon Bank, there [485] would be no way for you to know if that was a commercial bank, a savings bank, an industrial bank and so forth?

MR. REYCRAFT: I believe if it was a savings bank, it would have to have the word "savings" in its name, but Devon Bank I would know as a commercial bank. I would not know whether it was insured by the Federal Deposit Insurance Corporation, and I would not know whether it was a member of the Federal Reserve System, but all national banks must have the word in their name and they are required to be members of the Federal Reserve System, and to be insured by the Federal Deposit Insurance Corporation.

THE COURT: Is there any law or regulation, to your knowledge, that prohibits acquisitions among different types of banks? Such as a commercial bank cannot merger with a savings bank, and, therefore, open up a commercial bank where the savings bank used to be?

MR. REYCRAFT: Your Honor, there are examples, and we plan to get into this on our—in our case—of savings banks which have liquidated and have had their offices and their deposits taken over by commercial banks. [486] For example, the first one I see here on a list—and it was terminated in 1925, so I don't want to mislead anybody—by the Savings Society of Salisbury in Lakeville, Connecticut, terminated its existence in 1925, and the deposits liabilities were assumed by a bank which later became known as Salisbury Bank and Trust Company. So that this has happened on a reasonable number of occasions in Connecticut where commercial banks have taken over the business of savings banks.

THE COURT: How does that affect the resulting bank with respect to things that a savings bank could have done prior to the merger, but a commercial bank could not?

MR. REYCRAFT: It is no longer a savings bank, it has the limitations, then, of a commercial bank in that it can accept—it can't pay interest on demand deposits and it has the other powers and limitations of a commercial bank.

Now, we don't have any examples that I know about where a savings bank has taken over a commercial bank, but I believe at least theoretically it would be possible for a savings bank to take over the—the real estate of a commercial bank and offer to its [487] depositors a savings account in the savings bank, but I don't know of any case where that's happened in Connecticut.

THE COURT: How about the home office protection—if this is a legal opinion, you don't have to get into it, but maybe there's a case on it or you just have knowledge of a ruling—can you get around the home office protection by acquiring a savings bank?

MR. REYCRAFT: I think the problem—can I ask my Connecticut counsel?

THE COURT: Has it been done?

MR. REYCRAFT: Not that I know of, your Honor. I think the problem is that if a Bridgeport bank, for example, acquired an office of a savings bank in New Haven, it would then have to establish a branch at that location, and I think as long as head office protection is applicable in New Haven, it would be prohibited from doing that. So I think that it is probably not possible to get around the home office protection restrictions by acquiring a savings bank in a home office area.

THE COURT: There was nothing that you said that led me to the question, but there was something Doctor Murphy said, so maybe I should ask him.

[488] I think the other day you said something to the—effect that, aside from the holding company procedure, a large bank can go in and acquire a small bank which has its home in the surrounding areas of New Haven. I think you mentioned Branford—no, you did not—you mentioned North Branford, North Haven, Hamden, and I think one other town. Now, did you take into account savings banks?

THE WITNESS: No, sir.

THE COURT: Because it is your opinion that that would not get around the home office protection, or you just didn't think?

THE WITNESS: We just didn't—we—I don't know that there's been that much intraindustry acquisition activity. I just never even considered it.

THE COURT: You may proceed now. Thank you.

THE WITNESS: I think I should rephrase that, I mean interindustry.

THE COURT: I assume that's what you meant. I might square this away on the record. The home office protection just applies, does it not, to commercial banks?

MR. REYCRAFT: There is home office protection, also for savings banks, and as I understand the Connecticut [489] law—and if I'm wrong, will submit a memorandum to your Honor on it and maybe make it right—

THE COURT: Yes.

MR. REYCRAFT: —that if a savings bank has a head office in New Haven, for example, it is protected from branching by other savings banks into that area. But that they're mutually exclusive systems,—in other words, you could have a town where there's head office protection for a commercial bank, but not for a savings bank. New Haven happens to have head office protection for both systems, and Bridgeport also has head office protection for commercial banks.

THE COURT: So if I look at one of the charts and it says North Branford is an open town—

MR. REYCRAFT: That means for commercial banks.

THE COURT: For commercial banks.

MR. REYCRAFT: And it may or may not be open for savings banks, yes, sir.

THE COURT: Thank you. That's what I had on my mind. Although there may well be a savings bank located in North Branford with a head office there?

MR. REYCRAFT: Yes, sir, that's right, that's right.

[490] BY MR. REYCRAFT:

Q Now, Doctor Murphy, will you refer to P-90? Do you have that?

THE CLERK: Your Honor, I think the record should show now that the exhibits marked Defendants' Exhibit 56, 57 and 58 should have been numbered 57, 58 and 59.

THE COURT: All right.
THE CLERK: Because 56 was marked yesterday.
THE COURT: The record may so note, and during the recess would you change the numbers?
THE CLERK: Yes, I will.
THE COURT: Thank you.
You may proceed, Mr. Reycraft.
Q Doctor Murphy, you have Exhibit P-90?
A Yes, sir.
Q Will you look at the column headed: Banks Beginning Operation?
A Yes.
Q It indicated to me that since 1962 there were 22 new banks which began operation in Connecticut. Does that look about right to you?
A Yes, 22 new—
Q These are newly chartered banks, is that your understanding?
[491] A That's my understanding of the exhibit.
Q And during the same period of time, I believe you have testified earlier, and we have agreed, that there has been no occasion on which a holding company has been formed which has acquired a—or formed a newly chartered bank, is that right?
A That's right. To my knowledge. In Connecticut. It's happened a lot in other states.
Q In Connecticut?
A Right.
Q We're talking about Connecticut.
A Yes.
Q This exhibit seems to suggest to me that the most likely entrants into banking in the State of Connecticut are investors who get together and form a new bank. Would you think that the objective evidence which is set forth on P-90 supports that view?
A The most effective potential—
Q Most likely entrants into banking?
A Most likely entrants?
Q Right.
A I think if we compare it with P-70, we can see that over the period that there's been much more expansion by existing banks.

[492] Q Well, you are talking about de novo branching, right?

A De novo or foothold acquisitions.

Q Okay. But as far as—as far as chartering a new bank is concerned, comparing the probability that a holding company will do that to the probability that a group of investors may get together and do that, doesn't P-90 indicate to you that the probability is 22 to zero that new investors are more likely formers of new banks than are holding companies in Connecticut?

A I don't know that I want to say the probability of a holding company establishing a new office at zero.

Q But at least—I know you don't want to say that —at least if you look at the—

A The exhibit shows there's been 22 new banks, and there's been no de novo bank established, I think, I don't know. I'm not aware that any of these banks were affiliated with existing banks, they may have been, I don't know.

Q I don't think so, either, but I couldn't be a hundred percent positive, either. My understanding is that they are not.

A Right.

Q But doesn't the exhibit show that the most likely entrants by formation of new banks are private groups of investors rather than holding companies in Connecticut? Maybe not 22 to nothing, but by a pretty substantial probability?

[493] A Well, we indicated that's one of several ways that an organization can expand, and the record indicates—some of our other exhibits, P-70 and 71 and 72, indicates—that the other alternatives have—that they have exercised those, they've exercised the branching and the foothold acquisition.

Q But you agree with me that Connecticut National can't open a new branch in New Haven, right, City of New Haven?

A Because of home office protection, right.

Q And you agree with me, also, I think, that—that there is no foothold acquisition in New Haven? Now you said there were in the SMSA, in the New Haven

SMSA, but in the City of New Haven I think you agreed with me there were no foothold acquisitions?

A That was my recollection. That's—headquarter—yes.

Q Doesn't P-90 suggest to you that the most likely source from which a new bank is likely to be chartered in the City of New Haven is private investors rather than a bank holding company?

A I don't know that it indicates that. It says that that's happened historically, I don't know where these banks are located, but it indicates that—just what it says, since 1962 that 22 new banks have been formed.

Q I infer from that that—that—on 22 times private [494] investors have decided to form a new bank and have done it, and no time, according to other testimony, has a bank holding company done it, and I infer from that that the far more likely source of a new bank in New Haven or Bridgeport, for that matter, is new investors rather than a holding company?

A Well, in the city, but we have indicated that we—foothold mergers that acquired—that occur within the SMSA can subsequently expand—

Q And you have agreed with me, though, there is no foot hold acquisition in New Haven City?

A In the City of New Haven, right, downtown New Haven.

Q And you think there may be in Bridgeport, if I understand you correctly?

A I believe it is—there is one that I recall, a private bank.

Q Staples?

A Yes.

Q Do you know when the Lafayette Bank was formed, which is a Bridgeport bank?

A No, sir.

Q If it was formed six years ago, which I am told is about right, would you agree that that tends to support my view that new entrants into Bridgeport are more likely to come from private investors than from holding companies?

[495] A It happened. I don't know if it supports

your view. I mean we have indicated that branching entry can take place outside the central city and still have an effect.

Q But as far as the City of Bridgeport itself is concerned, which we have agreed has home office protection, assume it is a fact that six years ago the Lafayette Bank was formed by a group of private investors, that's a new entry into Bridegport, isn't it?

A Yes.

Q And if another group of investors chartered a new bank in Bridgeport, that would also be a procompetitive new entry in your view?

A Yes. Whether the investors were another holding company or a new set or whatever.

Q Right.

A Right.

Q And again, I don't want to be repetitious, and I am afraid I am, but at least on the 22 occasions private investors have done this and on no occasions have holding companies done it—

THE COURT: When was the Holding Company Act passed in Connecticut, wouldn't that be a factor, also?

MR. REYCRAFT: There is no—again, I'll ask my Connecticut friends to correct me if I am wrong, but [496] there is no prohibition against the formation of bank holding companies in Connecticut, nor do I believe there has been as far as I know, so that it's been a possible route for banks—

THE COURT: I misinterpreted something here. I thought something happened in Florida where there couldn't be ben acquisitions through the normal, usual and customary channels, so that the State of Florida came up with this theory of having a holding company acquire, and then other states picked it up.

MR. REYCRAFT: Florida prohibits branching at all, your Honor, in Florida you can only have unit banks—one office at all, In Illinois that's the case and Texas that's the case, no branches, Florida does permit—it doesn't prohibit bank holding companies, so if a state doesn't prohibit bank holding companies, it is possible to form a general commercial corporation which acquires

the stock of banks, and unless there's some prohibition against it, as there is in Illinois, then it is permitted.

THE COURT: Under federal law?

MR. REYCRAFT: Under state law, there is a federal bank holding act which was passed in 1956 which imposes restrictions on what kinds of acquisitions can be made [497] by bank holding companies, similar in some respects to the antitrust laws, but this is a federal act and maybe Mr. Clark knows more about that.

MR. CLARK: Well, your Honor—was enacted in 1969, the Connecticut law was only three years ago, and since that time two—there have been several single bank holding companies created and there have been two multi-holding bank companies—that is: companies that have control—which now control more than one bank, all of this has occurred since 1969.

Now, it is also true that before that time there was no express prohibition against holding companies in this state, and—but I—but there were no holding companies, and I suspect, I think this is the case, that it was probably felt that they were not permitted, and now there have been decisions by the board of governors of the Federal Reserve System and others in other states where there was no prohibition, and these decisions have held that where there is no prohibition, then holding companies are permitted.

But I think it is better to look at the facts as the way they were, and in point of fact, there was no law permitted before 1969, so this is a relatively recent phenomenon in this state.

[498] THE COURT: Another reason, from a practical business point of view, and we must assume bankers are more businessmen than—business minded men than legal eagles with respect to the banking law, they sit down, they want to expand into Meriden, so they sit down, they say, "Yes, it is a good business advantage to go to Meriden." So they sit with the lawyer and he says you can do it by acquisition, toehold acquisition, you can do it by branching, because there's no home offices in that town, or you can do it by a holding company.

Obviously, the banker is going to say, "What is the easiest and cheapest way"?

MR. REYCRAFT: Exactly.

THE COURT: So they go to a small little bank that's there and doing a nice little business, and they make a very attractive offer, and so they take the easiest route, I would think. But if all the other routes were blocked because the Justice Department comes in, because little banks won't sell, sooner or later isn't it true, Mr. Reycraft, that a banker is going to say, "Okay, then, let's go the holding company route"? If they weigh the advantages and disadvantages.

So as I sit here, you are saying because 22 times [499] banks took the toehold and acquisition type of procedure, a fortiori, it follows that for the next ten years this is the way they're going to go, and I am sitting here saying: well, maybe it is the easiest way to go, but if all those roads were blocked, then one of the lawyers for these banks will come forward and say, "Look, there's an alternative way," and the banker is going to say, "Which way?" And they're going to say, "Holding companies." And the banker is going to say, "What's that all about," and there's a memo that goes to them and they all meet and maybe the holding company idea will become popular.

Isn't that a factor that must be considered?

MR. REYCRAFT: May I make a couple of comments, your Honor?

THE COURT: Yes.

MR. REYCRAFT: On the 22 banks that began operation, these are new banks that were formed by private investors and they are, you know—they weren't formed by holding companies, nor for the purpose of being acquired by holding companies, which is not—not permitted under Connecticut law at the moment, as far as the—

MR. CLARK: Your Honor, I disagree with that.

[500] THE COURT: I'll give you a chance. This is, of course, all comments of counsel, and later on I'll certainly consider it, but I just think it is important sometimes to have colloquy between the Court and the

attorney on points that may be easily cleared up rather than get a witness on the stand. Go ahead.

MR. REYCRAFT: We'll put testimony on, your Honor, which will show that entering a city by a holding company route, if it is legally possible, is a far more cumbersome and expensive route than a new branch. So that is a factor, as your Honor noted, in the equation.

THE COURT: Sorry to have side tracked you.

MR. REYCRAFT: That's all right, your Honor, I'll get back on in just a minute.

Q Doctor Murphy, have you had occasion—any occasion to familiarize your self with the master's final report which has been submitted to this Court concerning banking business in Connecticut derived from out-of-state banks, including New York, Hartford and Boston banks?

A I reviewed it, yes, sir. I don't know if I have it with me or not, but I reviewed it.

Q You don't know if you have it with you?

A I don't have it with me.

[501] MR. REYCRAFT: Would you mark for identification as the defendants' next numbered exhibit—

THE CLERK: No. 60.

MR. REYCRAFT: No. 60—the master's final report.

(Defendants' Exhibit 60 was marked for Identification.)

MR. REYCRAFT: You have a copy, your Honor?

THE COURT: Yes, I do.

Q Doctor Murphy, would you refer to Page 9 of that report? Now, I recall an earlier exhibit, I believe it is P-65, which shows the amount of deposits held by commercial banks, quote, "operating in the Bridgeport SMSA."

Can you refer to the data for Hartford banks operating in the Bridgeport area as set forth in Pages 9 and 10 of the special master's report?

A What was the question again, sir?

Q Would you refer to the data on Pages 9 and 10 of

the special master's report concerning the banking business which Hartford banks have in Bridgeport?

A On Page 10 it indicates a hundred twenty-one demand deposit accounts originated having total—totals on deposit with Hartford area banks of 813,000.

Q And Savings banks?

A 241 savings accounts with 341,000.

[502] Q And what does it indicate for New Haven?

A For the City of New Haven, 14,403 demand deposits and total of 32,000—32,836,000, 12,559 savings accounts, deposits of 16,209,000.

Q And at the top of the page, what does it indicate with respect to commercial and industrial loans and mortgage loans?

A Hartford there's 7,555 commercial and industrial loans, in New Haven County. Balance of 40,357,000, and mortgage loans of 1,169, having balances of 32,595,000.

Q Now, will you compare the Bridgeport information with the information shown on P-65 for 1970? It indicates a substantial increase for the Hartford banks in business originating in the Bridgeport SMSA, does it not?

A Well, it is—it says the City of—for example, it says the City of Bridgeport, 121 demand deposit accounts.

Q So that's less than the SMSA, right?

A Yes, the city is less. It doesn't give any information for SMSA, but if we look at—no, we don't—well, we have a total of deposit accounts in the SMSA of banks operating in the SMSA on Exhibit P-66, there are 343,022 in the whole SMSA, and 121 from the City of Bridgeport from Hartford banks.

Q Do you have an exhibit which shows the amount of business which Hartford banks get out of New Haven?

[503] A In terms of—

Q I think P-68 may be the exhibit.

A It has—that is the deposits for banks with offices in the—in the SMSA.

Q Right. So P-68, if you compare it to the data on Page 10 of the special master's report, indicates that there is a very much larger amount of business being

done in the New Haven area than Exhibit P-68 would seem to suggest, is that right?

A Well, I'm not quite sure. For example, if we look at—refer to Exhibit P-69, it talks about deposit accounts. It indicates there are almost 300,000 deposit accounts, if that includes both demand and savings—

Q Special Master's report shows—

A Twenty—26—almost 27,000 accounts. So that's less than 10%. And we don't know from the Special Master's report, at least from Page 9 and 10, as to how much of that originated from the offices of the Hartford banks in the area and from outside. For example, both Connecticut Bank and Trust has five offices and Hartford has four.

Q In New Haven?

A In New Haven. And this doesn't break down—it's not clear from what I have read here as to when you talk about Hartford area banks whether you talk about those offices within [504] the SMSA or outside the SMSA.

Q By the way, all those offices are not shown on P-68, are they? CB&T is not shown on P-68, is it?

A P-68? Yes, it is the fourth bank down.

Q Okay. You are right. So the nine offices are shown, right. So does the Master's—Special Master's report show an increase in total business coming out of the New Haven SMSA from P-68?

A It's hard to tell, it's not comparable in the sense that at one time we're talking about the city and at one time we're talking about the SMSA, and we don't know from—from the Master's report as to how much of this business they're mentioning here comes from offices located in there, and we don't—I haven't calculated here the—I'd be interested in the size—average size of account here, also.

[505] Q What difference would it make if a New Haven SMSA resident had the nominal—his account nominally at a place outside the New Haven SMSA? He would be—he would be subject to competition or his business would be subject to competition from New Haven banks, right?

A Yes. But I was just saying I don't know what—you are talking about the—the magnitude of the business and it's hard to tell, to make comparisons between D-60, at least what I have seen here, and P-68.

Q Because there may be more business in other offices of the Hartford banks than shown on P-68; that's one reason, right?

A There is no idea of the magnitude of the kind of business that's involved.

Q For example, with reference to P-68, if someone from the head office of Hartford National Bank came to New Haven and made a loan to a business in New Haven, that loan might be shown at one of the New Haven branches of Hartford National Bank, but may be shown as a head office loan, right?

A It would depend on the accounting procedures and how they establish—

Q Is this the kind of thing you are referring to?

A Well, it's conceivable that—I mean you are indicating here that there is a certain amount of business and we [506] could calculate how much of it—there are numbers here and there are numbers here, and you are saying that the numbers in the master's report exceed those in the—on P-68 in terms of what—of these two banks, and I would be interested in how big those deposits are on average and how big those loans are. Because as we have indicated before, for these larger customers that's not—we consider that they have a lot of alternatives anyway.

Q Page ten shows that the Hartford area banks have 7,000—7,555 commercial-industrial loans originating in New Haven County with principal balances of $40,357,000.00, so you can compute the average size of the loan from those two numbers, can't you? I am not asking you to do it, but it's—

A Yeah, it's conceivable—it's possible.

Q And the same thing for mortgage loans which number 1,169 with pricipal balances of $2,595,000.00. You can compute the average size.

A Yes.

Q And you can also compute the average size of the

3,230 commercial and industrial loans with total average balances of $21,377,000.00 in New Haven.

A That is correct.

Q And also the 14,403 demand deposit accounts—

A Yes.

[507] Q —in New Haven with total balances of $32,836,000.00 that can be computed?

A Right. Another factor that makes it somewhat difficult is the time factor, and I assume the Masters Report was put together fairly recently.

Q Yes?

A Whereas because of it the data gathering procedures of the FCIC—this refers to data as of June 30th, 1970. So there is some growth trend that would overstate the Masters Report with relation to P-68.

Q I don't understand that.

A Well, you are referring to something which happened in 1970 with respect to P-68 and 1972 here with respect to Exhibit D-60. Now there's been some growth in the last two years.

Q Growth in business of the Hartford banks?

A There's been some growth in over all deposits, I assume. I assume that New Haven hasn't been stagnant, or the New Haven SMSA hasn't been stagnant, although it would seem that the city has grown less fast.

MR. CLARK: Your Honor, I think we should clarify this Masters Report. I am not sure that Mr. Reycraft is aware of the fact that these figures for the Hartford banks in New Haven and Bridgeport are in fact [508] total deposits held by the offices located there in that that there are no numbers in here which contain deposits from offices outside of the two cities, at least.

Q So to that extent—so to that extent the business originating in New Haven which goes to the Hartford banks would be understated?

A I am not sure.

THE COURT: Well, maybe we should recess for lunch. Can't we possibly agree on the Masters Report, what it does or does not indicate on pages nine and ten? I mean it's interesting that Mr. Clark did not take part in the proceedings which led to the Masters Report, and you did, Mr. Reycraft.

MR. REYCRAFT: Yes, sir.

THE COURT: And Mr. Clark is trying to correct you in your interpretation of it, so I would like to know if you can agree during the lunch hour, exactly what those figures indicate with respect to the location of these banks either inside or outside the SMSA.

We'll recess until 2:15 p.m.

(Whereupon, the luncheon recess was taken at 1:00 p.m.)

[509] AFTERNOON SESSION

THE COURT: I understand the exhibits now have been renumbered in accordance with the agreement. You may proceed, Mr. Reycraft.

MR. REYCRAFT: Yes, sir. Your Honor, prior to the recess, your Honor asked whether there's any disagreement between Mr. Clark and myself as to the data in the Special Master's report, and there is none.

Page 5 of the Special Master's report indicates that the information reflected in the report will be an aggregate of the number of customers of the Hartford area banks who initially opened their accounts or borrowed money from a branch located in the designated geographic area. So that if there is—if there is business from a New Haven resident which is in a Hartford office, for example, that would not be included in the Special Master's report. So there's no disagreement between Mr. Clark and myself on that point. For example, if I may direct his Honor's—your Honor's attention to Page 11, the totals there are for business of offices of the Hartford banks in Fairfield County, and the in the Fairfield County column, if, for example, the Hartford head office of one of the banks had a loan to a customer in Fairfield [510] County and it was carried at the head office, it would not be included in the totals, so that these totals are conservative in that they understate the amount of business which comes from these areas.

THE COURT: This may be very insignificant when it comes to the amount of numbers we have here, but

it is possible, is it not, that a borrower could go to the home office to make arrangements for a loan because maybe the branch manager feels that it is a little bit beyond his authority or because the borrower has had prior home office connection with the particular officer and the payments could be made in a branch office, though?

MR. REYCRAFT: Yes, sir. We think it is pretty clear that these numbers on Page 11 substantially understate the business that comes out of this area for that—exactly that reason.

THE COURT: It so conceivable, is it not, that one borrower—or a depositor—may in the course of a year do business with the same bank, but in two or three branches of that bank, primarily because of convenience?

MR. REYCRAFT: Yes, sir. I might also direct your Honor's attention, if I may, to Page 26 of the report, which gives a list of 25 corporations [511] located in New Haven County and Fairfield Counties with which I understand the defendant banks do not do any business, and on Page 26, according to the Special Master, of these companies 17 are customers of the Hartford area banks.

Now, I don't know, and the report doesn't indicate, whether this business is included within the totals on Page 11 or not. In other words, there is some possibility that these accounts would be head office Hartford bank accounts, but I don't know—well, the report doesn't show it one way or the other.

MR. CLARK: Your Honor, may I give my own interpretation.—

THE COURT: By all means.

MR. CLARK: —regarding these numbers arrived at by the Hartford banks in this area, whether or not they are understated, unfortunately, is simply a matter of record, there is no information that the amount of business done by the Hartford office—our experience—our experience with the data which we have relating to defendants indicates that, in fact, the home offices of these banks do do most of their business within the SMSA in which they're located.

[512] CROSS EXAMINATION CONTINUED

BY MR. REYCRAFT:

Q Doctor Murphy, prior to the recess we were discussing P-68 and trying to make some sort of a comparison between the data set forth in P-68 and the data in the Special Master's report. The data in P-68 is from—is as of 6/30/70, June 30, 1970, according to a footnote to that exhibit, and I—I derive from that exhibit that $33,600,000.00 of deposits in the entire New Haven SMSA came from the two Hartford banks. Does that look about right to you, 27 million for Connecticut Bank and Trust and 6.6 million for Hartford National Bank?

A Yes.

Q And if you will refer to the Special Master's report at Page 11, I believe it shows that approximately 49 million of deposits came from the City of New Haven alone as of that date, which is an increase from—from 33.6 million for the entire SMSA in June, 1970 to over 49 million for New Haven City alone as of August, 1972.

Do those figures gibe?

A Those figures seem to be approximately correct.

Q And it indicates, according to the Special Master's report, that the total deposits in New Haven County in the Special Master's report as of August of this year were approximately 87,697,000 compared to the 33.6 million in the [513] entire SMSA in June of 1930?

MR. CLARK: I object, he's comparing figures as a mosaic, New Haven County includes Waterbury and other cities in the county.

MR. REYCRAFT: That's true.

MR. CLARK: I don't think that the comparison is meaningful.

Q They're not completely comparable, Doctor Murphy, as I'm sure you understand?

A That's what I was going to say.

Q But referring to the New Haven City data alone, would you agree that that indicates a pretty substantial

increase in the competitive stature of the Hartford Banks in the City of New Haven?

A Well, it is difficult to say without knowing what the overall rate of growth was. It appears to me that we have an increase—once again, difficult to compare—30—from 37 to 49 million, according to what you said.

Q 33.6 to 49.

A 33.6—and that implies a certain annual rate of growth, and I don't know what the annual rate of growth in the total SMSA was.

Q I realize you haven't done that arithemtic, you agree with me, though, do you not, that the 49 million figure for [514] the City of New Haven is less than the entire SMSA, the City of New Haven is less than the SMSA?

A Is smaller than the SMSA.

Q Yes, smaller than the SMSA.

MR. REYCRAFT: Your Honor, would this be an appropriate time to offer the Master's report in evidence?

THE COURT: I thought it had been offered.

MR. REYCRAFT: I marked it for identification, and I do now offer it. Is there any objection?

THE COURT: I thought there was a general understanding that exhibits would come in without objections subject to being stricken later on the grounds of relevancy, authenticity.

MR. REYCRAFT: There was only a question of timing. I would have planned—and I do plan to do it for all our exhibits at the beginning of our defense, but I thought if Mr. Clark had any objections, since we're talking about it, that this might be a time to bring them forth.

THE COURT: See what Mr. Clark has to say.

MR. CLARK: Well, your Honor, frankly, I'm not totally prepared to—because I had anticipated that he would not offer it until he offered all the other [515] exhibits, and I didn't think that would come today. We will not have any substantial objection to the Master's report, but I would rather, if I could, your Honor, reserve objections until Thursday till I have had an opportunity to review the picture.

THE COURT: Actually, gentlemen, two practical matters come to mind immediately. One is you have been using this exhibit as if it was an exhibit, and so has the witness, and so has the Court.

Two, it hadn't seemed to inhibit your cross examination because it is not in evidence.

So with those two things in mind, do you see any objection to giving Mr. Clark a few more days on it?

MR. REYCRAFT: No, indeed.

THE COURT: All right.

Q Doctor Murphy, I'm sure you will be glad to know I only have a few more questions for you.

Would you refer again to Exhibit P-2, the census data?

A Yes, sir.

Q And turn to the Bridgeport SMSA sheet?

A Yes.

Q Now, does that show Bridgeport residents and the places in which they work?

[516] A Yes.

Q Okay. It indicates, does it not, that 25,418 Bridgeport residents work outside the SMSA?

A Yes.

Q And would you refer to the list of towns beginning with Norwalk City and then refer to Westport and Wilton, Redding, Ridgefield and Weston? Are those—do those three groupings make up the Norwalk SMSA? That's in the earlier part of the exhibit.

A Right. Norwalk City, Westport and Wilton.

Q Norwalk, Westport, and Wilton, right?

A Right.

Q And it does not include Redding and Ridgefield?

A No, not on the list here.

Q So according to P-2 about 6500 people from the Bridgeport SMSA who live in the Bridgeport SMSA work in the Norwalk SMSA, does that look about right to you?

A Yes, 6,404.

Q Okay, very good. Going down to Stamford City and then the column for Darien and the remainder of Fairfield County, I believe that those three lines are the persons who work in the Stamford SMSA, and I get

about 3,825, and then I get about—then I get 1,529 Bridgeport residents who work in New York City.

[517] Does this exhibit indicate to you any interaction between the SMSAs, the Bridgeport SMSA and Stamford and Norwalk SMSAs?

A Well, it indicates that there's—well, once again, depending on what you do with this not reported figure here. I have for the Norwalk SMSA 6,404, which is—oh, it looks to be about, say, 4%. I'm not sure.

Q And then you have got the Stamford SMSA?

A Yes, which is—3,597, is that what you said?

Q I got a little more than that, but that's—I'll take your number.

A Well, it's—it's Stamford, Darien, Greenwich and New Canaan, right?

Q Yes.

A So it's those two figures, and that would be an even smaller percentage.

Q All right. Altogether there are 25,418 Bridgeport residents who work outside the Bridgeport SMSA, according to this exhibit, right? And again, not allocating the not reported group?

A Right, right.

Q And that comes out to—to about 20% of all the reported—well, is that right? What percentage does that come to of all of the reported workers?

[518] A I can't figure it out.

Q All right, 25,000 out of a total of about 147,000 reported, is that about right? You subtract from 160,324, 13,728 on the bottom, so that would be about 1/6 of the Bridgeport residents who work outside the SMSA?

A Once again, I think you are—you know, it is questionable as to what you do with that 13,700.

Q All right. You have testified earlier that there was substantial interaction, in your opinion, between the Norwalk and Stamford SMSAs and between those SMSAs and New York?

A It appears though there was, yes.

Q Yes. In your opinion, does it appear that there is substantial interaction between the Bridgeport SMSA and the Norwalk and Stamford SMSAs?

A Appears to be much less.

Q But for Norwalk there appears to be a good deal more than for Stamford, right?

A Yes.

Q Do you think that this interaction is likely to have competitive effects on banks operating in those areas?

A I don't think the percentages are high enough to change the conclusion of the SMSA that the two SMSAs we're looking at are approximations of the market.

[519] Q All right. You don't think that the fact that a bank may have offices throughout these SMSAs and that there is interaction among them will have any significant impact on its pricing decisions for its products?

A Well, no, I think the general relationship between the concentration in the market area and performance—designed in several—several possible ways still holds.

Q You don't think that if a bank has the same price throughout its service area that it will be influenced by competition throughout that area in setting that price?

A Well, that—that depends on its—assuming that it has that policy, then it could vary other things, such as convenience factors, it could have different operating hours, it could have different labor in the various offices to provide better service, it could—there are various ways in which this differentiation could take place.

Q You aren't familiar with any specific—

A No.

Q —example of such differentiation?

A No, no.

Q And if there was none, would you be of the opinion that competition throughout the service area would impact upon the pricing of the services?

A No. I say the service area concept is not—I don't [520] think has economic meaning. For example, according to your definition, as I recall from last week, it is where the entire bank gets it business, yet, if we were to have a bank with one office in Fairfield County and one way up in the northeastern area, and they were both small offices, you would then include the whole state, I assume, as a service area, which doesn't seem to me to be relevant.

Q Well, if Connecticut National Bank, for example, had

a significant number of offices, say, as many as a third outside the Bridgeport SMSA, would you say that competition from banks in those other areas would be likely to impact upon its pricing?

A Excuse me, I didn't hear that. Connecticut National Bank had—

Q Assume for the moment that they might have as many as one third of their offices outside of the Bridgeport SMSA and in the Norwalk and Stamford SMSAs, in your opinion, would it be likely that competition in the Norwalk and Stamford SMSAs would have an impact on their pricing of their services throughout the area?

A Pricing and other—well, I indicated earlier, that that decision—if a single policy holds, that decision could be based on that or it could be based on the lower—or the place where the concentration is the highest. In other words, [521] you are saying—I think you are trying to—I don't know what you are trying to do. But let's indicate that competition is—lower prices elsewhere may spread as a result of this.

Q Yes, sir.

Q Now, it is conceivable it could go the other way depending upon the various character—main characteristics in these areas, if you assuming the single pricing policy, it couldn't go in the other direction.

Q Assume, for example, that in the City of Bridgeport, and again also assuming that the bank had a systemwide pricing policy, it raised its prices systemwide for Bridgeport reasons, do you think that competition from banks in the Norwalk and Stamford SMSAs would be affected in any way?

A Well, yes. I think that they would lose some business down there, but that's a decision. Having taken that decision—made a decision to have a systemwide policy, they can then determine what the optimum policy is for total profits for the whole system. There may be a write-off involved.

Q Well, aren't—all right.

A It depends on the relevant elasticities in the different markets.

Q If I understand you, you are saying that a prudent

bank manager would take into account the amount of business he had from the various areas and would price his services in [522] such a way as to maximize his profits wherever he was, is that right?

A For the whole system.

Q Right.

A If he is going to maximize it everyplace, he would charge a different price wherever he was.

Q Assume he doesn't do that for another reason, maybe he can't?

A This could go in either direction.

Q So that a banker—

A If he had that policy.

Q —a bank manager wanting to maximize his profits for the service area would have to consider, would he not, what business he might gain or lose in all parts of his service area?

A Yeah, then he could vary—his nonprice competition.

Q Ours—

A He could vary his level of costs, let's say, to obtain business in one place or another to take advantage of whatever market power he might have.

Q All right. But you do think that he would take into consideration business he might gain or lose throughout the service area in setting his price?

A I would imagine so. But he has these other options.

MR. REYCRAFT: All right, thank you, Doctor, [523] I have nothing more to ask.

THE COURT: Redirect?

MR. McENERNEY: I wonder if I could cross?

THE COURT: By all means.

MR. McENERNEY: I don't have too much.

THE COURT: Take all the time you want.

CROSS EXAMINATION

BY MR. McENERNEY:

Q Doctor Murphy, I believe you testified that this consolidation would produce an undesirable level of concentration, that substantially true?

A That it would foreclose future—future possibility of deconcentration.

Q Do you have an opinion as to what the largest market share the consolidated bank could have before you would label it anticompetitive? Do you have any views on that?

A I don't understand—calling it anticompetitive on potential competition as well as their market shares in that four-town area.

Q Well, do you have—all right. Yes. In other words, your actual competition, you are measuring in the four-town area and your potential you are measuring in a number of SMSAs, do you have an opinion as to what the largest market share might be for the consolidated bank for it to be anticompetitive [524] whether you consider it actual competition, anticompetitive, actually, or anticompetitive potentially?

A Well, it—that depends on the actual—I'm not—I don't know if I can get an actual number, we usually look at the three bank concentration level as a proxy—of the market power, that's what testing has found, at least the testing that I have done indicates is the best proxy, and in general, the higher the levels of concentration, the performance is directly related to the level of concentration.

Q Would you agree that your competitive assessment, your opinion in this case was begun with an open mind and without any bias one way or the other?

A Yes.

Q And do you believe that these studies, I take it—either that you have done or that others have done, is pretty much what your opinion is based on, is that correct?

A Based on an examination of evidence over a time, my interpretation of that, yes.

Q And then as well as your examination of the evidence in this case?

A Yes, sir.

Q Do you believe that these studies that—not only that you have conducted, but that others have conducted, are good guides to bank regulators?

[526] A On the whole. Some are better than others and studies tend to have inadequacies of one kind or another, but I think the accumulated body is useful, yes.

Q Doctor, do you recall writing the following, or saying the following: "It is my opinion, hopefully as to what I have been informed, that the results of the imperical studies are persuasive that there is some effect of concentration on performance"—

A Yes.

Q —of course, my acceptance of the results of these studies is influenced by my a prior bias, of which I am particularly aware"—I'm sorry—"partially aware." Do you recall making that statement?

A Yeah, I made that statement, yes. My bias is being in general that the economic theory suggests certain relationships and I consider those to be relevant and that the imperical evidence that I have examined is consistent with that.

Q I take it, then, Doctor, that you are strongly of the belief that the concentration does adversely affect performance?

A Yes.

Q Isn't that about right?

A Yes.

Q Now, what is that belief based on, is it a—studies?

A Oh, yes.

[526] Q And who conducted these studies?

A A large number of people.

Q Are they in agreement or—I mean are these economists, are they?

A Yes, sir.

Q And they are generally in agreement on this?

A Not—I think it is subject to some interpretation. Some people may disagree, that's my professional assessment of them. In addition to the comment you cite which was from the conference at the Federal Reserve Bank of Chicago several years ago, I had prepared a paper which reviewed the results and pointed out the limitations of the various studies where—specifically I think improvements could be made and how I interpreted the conclusions. I don't know. There are—there may be disagreement amongst the professional—I'm giving you my opinion.

Q Yes. Well, do you find, then, that many of these studies with which you have agreed in general, at least suffer from shortcomings?

A Yes. Every study suffers from shortcomings.

Q I wonder, Doctor, whether you recall in this regard as to shortcomings whether you recall writing that the serious problems in these studies included the following: A, the theoretical structure of the underlying models has [527] not been sufficiently developed, the availability of data in the form of required reports filed by banks had led to a tendency for researchers in this area to become what I sometimes refer to as, quote, mad correlators?

A You are reading it.

Q And, B, the statistical work in this area has suffered from an inadequate delineation of market areas?

A Right.

Q And, C, the effect of nonquantitative factors not readily available in the standard reporting forms should be studied, D, the dynamic aspects of the adjustment to exogenous changes under alternative market structures should also be studied. E, the available data sources are not particular useful for market structure research.

Are these some of the shortcomings that you—

A Some of the shortcomings, yes.

Q Doctor, as an economist in analyzing the effects of a merger between two mutual savings banks, would you take into consideration commercial bank time and savings deposits?

A Savings deposits, I think, yes, sir.

Q And as an economist in analyzing the competitive effects of a merger between two S and Ls, between two savings and loan associations, would you take into consideration the time and savings deposits of commercial banks?

[528] A Savings deposits usually, yes.

Q Savings. And that would be in agreement—your answers to those questions would be in agreement with the following excerpt from a co-authored article by you and Gail Gilbert—

A Gary.

Q Gary Gilbert—which says in part, "In analyzing the competitive effect of mergers among thrift institutions, that evidence suggests that commercial bank time and savings deposits should be included in the determination of market shares"?

A Yes.

Q Doctor, turning your attention to—rather briefly, because I don't want to spend much time on it—but Plaintiff's Exhibit No. 72, I just want to ask you—really just want to ask you one question.

Upon examination of the six pages, could you tell us, please, the number of mergers that Hartford National Bank and Trust Company has had during the period on the exhibit?

A Ten.

Q And the number, please, that Connecticut Bank and Trust of Hartford has—the number of mergers—that Connecticut Bank and Trust of Hartford has had?

A Nine.

Q And would you examine the balance of the exhibit and tell me whether there is any other bank or banks that come near [529] that number of mergers?

A What do you mean by "near"?

Q Well—

A Colonial Bank had five, is that near? There's no one else that has ten and—Union Trust and Fairfield together had 11, Fairfield County had seven.

Q Are you getting this from Exhibt 72?

A Fairfield County Trust has listed seven—Trust Company of Old Greenwich, National Bank of Norwalk, First National Bank of Greenwich, First National Bank and Trust Company, Bethel National Bank, First National Bank and Trust Company, Danbury National Bank.

Q Oh, I see. In other words, the prior history of that bank before it merged with Union Trust?

A Well, it had seven by itself.

Q So that would it appear to you, then, that the Hartford National has had at least the same number?

A Yeah. Right.

Q And I take it that the Hartford National and the Connecticut Bank and Trust are the two largest banks in the State, is that correct?

A That's correct.

Q Now, Doctor, would you take a look, please, at Plaintiff's No. 65, 68—

[530] A Yes.

Q —80, 81—

A 81, yes.
Q —82, 83, 84—
A Uh-huh.
Q —85, 86, 87 and 88?
Now, could you just describe those for us, please, what each of these show?
A Each of these are the number of commercial banks operating offices within each of the SMSAs in the state.
Q All right. And would you—
A And it gives the number of offices deposits and proportion of deposits.
Q And would you examine them and tell me whether —rather, strike—strike that.
Tell me what the percentage share of the—what SMSA or SMSAs appear to have the largest percentage share in the top two banks?
A I notice that some of the exhibits have the top three banks, but I was more interested in the two, the two largest.
Q And although the mathematics isn't done for you, I suggest that Hartford might be looked at?
A Hartford, New Britain.
Q And how about New London?
[531] A Danbury, Bristol—Bristol and Hartford appear to have the largest in the top two.
Q Well, now, on Plaintiff's Exhibit 87 did you check that and see how that comes out? The top two?
A That's 89%.
Q 89%?
A Right.
Q Of the New London SMSAs deposits are in the top two banks?
A Right.
Q And what banks are those?
A Hartford National and Connecticut Bank and Trust Company.
Q And directing your attention to P-84—
A Right.
Q —could you tell me, please, what the top two banks in that SMSA have in percentage of deposits?
A That sums to 85.3%.
Q Now, would that appear to be the highest two percentages in all of the SMSAs in the state? Among the top two?

A That appears to be. Bristol has 81%.

Q And in the Hartford SMSA, if I didn't ask you, can you tell me what two banks those are that have that large share?

A Connecticut Bank and Trust and Hartford National Bank [532] and Trust Company.

Q As to those two markets, the Hartford SMSA and the New London SMSA, would you agree that a new entrant up there might be—in those two areas might be of some assistance in deconcentrating that market—those market shares?

A Hartford and New London?

Q Hartford and New London.

A Yes.

Q Now, would you take a look at P-95?

A Yes.

Q Do you have that?

A That's right.

Q Can you tell me what that is? Would you describe that?

A That is the advisory report from the Justice Department, Antitrust Division of the Justice Department, to the Comptroller of the Currency in this particular action.

Q Have you had an opportunity to review that or read it?

A I read it sometime ago, I don't remember all the details, though.

Q Do you agree generally with it? I know you didn't write it, but do you agree in general terms with it?

A I'd have to review it again, sir.

Q I don't want to take the time with you, but could you tell me this: would you look through it rather quickly and tell me whether the Department of Justice in its competitive report [533] to the Comptroller of the Currency in any way used the term "SMSA"?

A I don't believe so, no. I can't see it.

Q Can you tell me whether the word "towns" was used?

A The word "towns", yes, I can see the word "towns" right here.

Q You see that on almost every page, do you not?

A Uh-huh.

Q How about the word "county"?
A Yes, I see it on the first page.
Q How about on Page 2?
A Yes, I see the word "county", right.
Q How about on Page 3?
A I see the word "county" twice.
Q You don't see SMSA?
A No, I don't.
Q Do you see "towns" on the next several pages?

MR. CLARK: Your Honor, I must object to this line of questioning. Doctor Murphy did not testify on the Department of Justice Advisory Board, if counsel has questions regarding his opinion, that's one thing, but to question him about some document which he didn't write and gave no testimony on is improper.

THE COURT: Well, I suspect that there's several [534] aspects to the objection, one, it may be outside the scope of direct, which I will overrule. And two, I just take it you are not using the witness to highlight certain things which you can do with the Court later, but that you are going to end up with asking him his opinion on something?

MR. McENERNEY: No.

THE COURT: Well, later during argument you can ask me to count how many times the word "town" is used, why hold him up on something that—

MR. McENERNEY: Yes, your Honor, right.

THE COURT: —that I can do with you?

Q Would your response generally be true with respect to P-96, which is the FDIC report?

MR. CLARK: I have the same objection, your Honor.

THE COURT: Same what? The question is ambiguous to me.

MR. CLARK: I'm sorry. P-96 is an advisory board of the FDIC.

MR. McENERNEY: Yes, where he worked.

THE COURT: I'll overrule the objection if you are going to examine him on a document that's in evidence.

Q With respect to P-96, Doctor, I merely wanted to ask [535] you whether you would—whether you have read it?
A Yes, I read it.
Q And you are familiar with it?

A I'm generally familiar with it, yes.

Q Did you have any—anything to do with the writing of it?

A The opinion—this opinion?

Q Yes.

A Well, let me—that's kind of a broad question. Did I have anything to do with it? We analyzed this particular merger in the research division as did the examination division and the legal division, and we had a representative that voted on this in what's known as a corporation's board of review, which is a pre—it is a board of directors in the FDIC and there's a group known as the board of review made up of department heads and several advisors that give a recommendation to the board of directors. Somebody from the research department voted on that, on the recommendation to give to the board of directors, so our—and our reports were part of the decision process, but I did not write this particular—or have anything to do with the actual drafting of this particular document here with the exception that we may well have checked out some of the data for the chairman.

Q In other words, you were employed at the FDIC at the time?

A FDIC when this—

[536] Q At the time this was issued?

A Right, right. In the research division we recommended—well, our finding was essentially the same as the corporation's, what we call substantially adverse impact.

Q Well, would you just look through it even though it is not your work product, would you look through it and tell me whether you see the phrase SMSA anywhere in it?

MR. CLARK: I make the same objection, unless he's going to ask him questions after all this series of questions, I say it's improper.

THE COURT: Objection is overruled.

A I don't see it, I see the word "county", and I see the word "city". I don't know if I see the word "town". I also see a lot of other words, too, I see the word "community".

Q Now, on Page 3, would you just read this—read this note that accompanies each of the FDIC competitive reports?

A Yes. "As required by the Bank Merger Act of 1966, 12 U.S.C. 1828(c), this report is limited to report on the competitive factors involved, does not comment on the factors of convenience and needs of the community to be served or the financial and managerial resources or future prospects of either bank or of the resulting bank and is not a recommendation as to whether the application should be approved or disapproved."

That's the statute—statute indicates that the [537] other agencies report only on the competitive factors.

Q Doctor Murphy, you indicated in response to a question by Mr. Clark last week that you were aware that the Bridgeport—that the town—City of Bridgeport and the City of New Haven were closed to de novo branching by banks headquartered outside, is that correct?

A Yes. My understanding.

Q Could you tell me, Doctor, what caused these two towns to be closed?

A The home office protection law in the state.

Q It is a law, is it?

A That's my understanding.

Q All right. Would you describe the state law as a legal barrier to entry into closed towns?

A A legal barrier? Yes.

Q And do you know whether this barrier applies to both state and national banks?

A Yes, it applies to both.

Q Do you know whether a bank of its own free will can open an office in a closed town or in an open town?

A Of its own free will?

Q Of its own free will.

A I asume it can't be done against its will. It has to obtain a regulatory approval, yes, sir.

[538] Q And in the state—in the case of a state bank, that would be the—

A Banking Commissioner.

Q —banking commission—and in the case of the national bank?

A Comptroller of the Currency, although from the state—yeah, well, those would be the relevant decision makers.

Q You testified that you were aware of the closed status of Bridgeport and New Haven?

A Uh-huh.

Q And I am wondering whether you can tell me whether or not, if you know, whether or not Danbury is open?

A The City of Danbury?

Q Yes.

A Offhand, no. I could check it, but—

Q Do you know whether Norwalk is closed?

A The City of Norwalk? No, I don't. No.

Q Do you know whether the Town of Stamford is open?

A I don't. I can check those. I don't know them from memory. Though, I can check them.

Q Do you know whether the Town of Waterbury is open or closed?

A I think it is closed, Colonial Bank and Trust has its head office there.

[539] Q How about Hartford?

A Hartford, the two Hartford banks that have been mentioned before are headquartered there.

Q How about New Britain?

A I don't know about New Britain.

Q How about Meriden?

A Meriden, I think, is closed, the city is.

Q How about Westport?

A Westport, I don't know.

Q Would you agree, Doctor, that the major population centers in the State of Connecticut are closed at this time to branching?

A I'd have to look at the population tot'—the total population broken down and look at the trends, my recollection in the Bridgeport-New Haven area is that the faster growing areas are outside the central city, and some of these towns are open, and it is also conceivable that these towns would not stay open—stay closed forever.

Q It is conceivable, I would grant you.

A Right, yes.

Q I would agree, it is conceivable. The towns that I

mentioned, Westport and New Britain and Meriden, Hartford, Waterbury, New Haven, Bridgeport, these are all closed towns, Doctor?

A I thought as much.

Q And I wondered whether you would agree with me that [540] these are certainly the population centers, the primary population points?

A I think growth outside some of these statistical cities exceeds the internal growth of the central city itself.

Q I'm not asking about rate of growth, I'm just asking you whether you think the Town of Bridgeport has more people in it, even though it may be losing population, than the town of West Haven or some satellite community?

A I would assume at this point, yes.

Q Did your studies in connection with your testimony here include the status of these—of the various towns in the state, whether they're open or closed?

A Yes, in general, I considered that, yes.

Q Do you know how many towns in Connecticut have no banks at all?

A I saw that figure, but I don't recall it at the present time.

Q Now, when you testified—

A I suppose we can check.

Q Excuse me.

A Exhibit 32. Quickly, it looks as though—you can count them—there seems to be a good number in the western—eastern part of the state and some up in the northwestern part.

Q Would these towns have any suggestion to you as to why [541] a bank hasn't moved into them, could you tell from your study just what the reasons might be why no bank is there?

A From just looking at the map, no, I couldn't.

Q Well, now, in connection with—

A Well, within—well, I don't know.

Q In connection with your testimony, Doctor, did you visit some of these towns throughout the state?

A I have driven through them—not in connection with my testimony, no, sir.

Q Not in connection with this case?

A No.

Q Did you talk with any bankers or any bank customers?

A No. No, no, I did not.

Q Any borrowers?

A No.

Q Where did you get most of your information with respect to your testimony here, was it—from what source?

A Plaintiff's exhibits and from my general knowledge.

Q I believe Mr. Reycraft asked you this, and I believe your answer was that the—generally speaking, you did not prepare the plaintiff's exhibits, is that correct?

A That's correct. I was aware what exhibits were being prepared and was sent copies of the interrogatories and copies of the exhibits as they were being prepared so I had some opportunity [542] to see them as they were being prepared and had the opportunity to advise the Justice Department as to whether I thought they were appropriate or not.

Q Doctor, directing your attention briefly to P-79—

A Yes, sir.

Q —may I ask you whether with respect to the characterization of that document whether or not you would agree that to an untrained eye it would appear that domestic holding companies can charter banks, would that be a fair statement?

A To an untrained—charter—

Q I say: the characterization of P-79, it would appear to an untrained eye that domestic holding companies can charter banks?

A States no banks chartered by domestic holding companies.

Q But we know, Doctor, don't we, that either the federal or the state regulatory bodies charter banks and not corporations?

A Right.

Q So would a more fairer characterization of that document, in your opinion, read something like this: de novo banks chartered by bank regulatory authorities to domestic holding companies by state?

A Yeah, chartered by—yeah, the regulator, the—[543] it must get approval, yes.

Q Now, Doctor, in connection with your work at the FDIC, do you know whether they use a definition of "service area" in their merger applications?

A I believe it is in the application, yes, 75% of—of the area from which 75% of deposits originate.

Q What is that, IPC deposits?

A I believe so. I believe so.

Q Would you consider that this formula, this 75% formula that the FDIC uses as a starting point in determining a bank's relevant geographic market?

A No. We didn't use it.

Q But the FDIC did, is that correct?

A It was on the form, there's a lot of other information on the form, also. We looked at it all, of course, but we considered the service area concept not to be sufficient. We usually look at the economic characteristic area involved or areas.

Q In other words, when you say "we", you are talking now about the—

A The research division.

Q —the research people?

A Right.

Q Do you know whether or not this was also true with the [544] board itself when it rendered an opinion?

A I—

Q Did they concern themselves more with the 75% figure?

A I couldn't—I'm not sure about that. I couldn't testify. I—no, I don't know.

Q Now, Doctor Murphy, you testified, I guess it was last week, that a toehold or foothold acquisition would be preferable to Connecticut National Bank rather than picking up—rather than consolidating with First New Haven?

A Yes, sir.

Q Can you tell us what efforts you have made in obtaining facts that would show various toehold banks are in fact willing to sell?

A I didn't—did not make such efforts. We—I figure that if there's sufficient number of—price can be determined.

Q You assume, then—

A Assume that, yes.

MR. McENERNEY: That's all I have, your Honor. Thank you.

BY THE COURT:

Q I know that you probably answered this somewhere in your testimony, but would you again tell me why you think toehold acquisition would be much preferable in this case than the merger, [545] which drawn to the extreme could mean that if the First New Haven was one bank and all its branches were separate banks, you would have no objection if CNB knocked them off one at a time, but you do object if it is one massive acquisition?

A I'm not sure, your Honor, whether—one at a time, any particular one as opposed to the whole would be less desirable, but one at a time, if it was done over time, could conceivably result in increased—you know, an undesirable increase in concentration.

In other words, once—once a bank enters another area, the question then starts to grow and obtain some market—some substantial market share than further acquisitions then become a case of horizontal merger case within the particular area, and that would depend on the fact situation as to whether it was undesirable or not. But just in general, what we're—the general theory, way we approach this, is that there are alternative ways of entry, and some have less desirable consequences than others, and the—we attempt to try to encourage those which have the desirable consequences, increasing the number of alternatives and deconcentrating these markets.

In other words, if there's a smaller bank which is not increased its share or grown too much and is a very

small share of the market, we feel that an aggressive, capable bank, such as the defendant banks, both banks, can come into an area [546] and expand that market share and reduce the level of concentration.

Q All right. Then, going beyond this point, the resulting bank can then go after some of these smaller banks that neither one of the defendants now can, quote, "afford to acquire because the price is too high"?

A No, I just state that—well, I don't—in answer to counsel's question, if I make a study of whether these banks were for sale, no. But I guess I feel that there are circumstances which could occur sufficiently likely, for example, a small bank owned—closely held bank find that there's not a market for the shares of stock and as the family participation grows old and there may not be somebody else in the family wanting to come in and manage the bank, this would make the bank available at some particular future—this is one conceivable type of occurrence that would make the bank available, and a sufficient number, I think that it is sufficiently likely that it could occur for one of four banks.

THE COURT: All right, thank you.

MR. McENERNEY: Thank you.

THE COURT: Any other defense counsel wish to examine?

MR. BELL: No, your Honor.

THE COURT: Redirect?

[547] REDIRECT EXAMINATION

BY MR. CLARK:

Q Dr. Murphy, would you refer to Exhibits P-6 and P-7 again, please.

A Yes.

Q These exhibit show, don't they, the commuting by Connecticut residents into New York State?

A Yes.

Q P-6, which deals with such commuting as 1970, what does it show for—as a percentage of Bridgeport SMSA workers working in New York City?

A It shows that less than 1% of workers residing in Bridgeport, Bridgeport Standard Metropolitan Statistical Area, less than 1% work in New York State.

Q And P-7, which is as of 1966, and admittedly has somewhat of a different source of information, what does that show for the percentage of Bridgeport workers commuting to New York?

A 1.2%.

Q Is that higher than it was in 1970?

A Yes.

Q Now, on P-7, as of 1966 what is the percentage of Norwalk SMSA workers who commuted to New York?

A 13.43%.

[548] Q And on P-6 as of 1970 that was?

A 12.1%.

Q And on P-7 as of 1966 what is the percentage of Stamford SMSA residents who commuted to New York?

A 21.6.

Q And as of 1970?

A 19.27.

Q What is your general conclusion, then, regarding the amount of commuting between these areas and New York in this four year period?

A It would appear that there's a decline over the four year period.

Q Dr. Murphy, you were questioned also—I refer to P-2.

A Yes.

Q And the Bridgeport SMSA.

A Yes.

Q And you were questioned regarding the amount of interaction between the Bridgeport SMSA and the Norwalk and Stamford SMSA?

A Right.

Q Would you now refer to that amount of commuting between the Bridgeport SMSA and the New Haven City, New Haven County, all the way down to Derby and Ansonia?

[549] A Including Oxford and Seymour?

Q Yes.

A Yes.

Q What's the approximate total of that amount of commuting?

A Appears to be 57 hundred and—I'm not sure. I couldn't add it up too quickly.

Q Perhaps 6 or 7 thousand?

A Six or 7 thousand.

Q Is that approximately the same as it appears for the Norwalk SMSA?

A It appears to be of the same order of magnitude, yes.

Q Well, what are your conclusions then as to the extent that there is interaction between Bridgeport and Norwalk, what are your conclusions as to the interaction between Bridgeport and New Haven?

A Well, it appears to be quite similar. Quite similar magnitude.

Q Dr. Murphy, let us assume that a bank does have a policy of charging uniform prices throughout it—shall we call it a service area—and let us assume that it does take into account all banks which may compete for some customers in this area, assume that one bank competes for say less than 5% of this bank's customers and another bank competes for 75% of [550] that bank's customers, which competing bank would this bank—

A The one with the 75%.

Q Assume that market in which the 75% of the customers are located is more highly concentrated than the market in which the other 5% are located, how would that affect the bank's decision as to its pricing?

A I would think that it would base it on that location and that in terms of—

Q Which location?

A The location where it would have competed for 75% of its customers.

Q Why does the concentration, the degree of concentration affect that?

A Well, degree of concentration is a measure of the proxy for the market power and that that would —would then—the relationship would be such that then there's more highly concentrated markets, they'd be able

to improve their position by considering competition in those markets and pricing services accordingly.

Q Does the extent of con—is this related to the so-called profit maximizing effect which we consider most banks or most competitors consider?

A Yes.

Q How is that related?

[551] A Well, they—profit maximizing behavior would cause them to view the various markets and then make decisions as to where the profits for the whole system would be the greatest and base decisions on that, assuming it had this kind of systemwide decision rule, and it would look at the place where the most business, among other things, would look at the place where the most business was in effect and where the concentrations were highest, if those were the same, it would dominate their decision making.

Q Dr. Murphy, have there been several studies with the relationship of concentration and performance in banking?

A Yes.

Q Do they agree generally as to that relationship?

A Yes, it's my interpretation that they do, right, even though they have inadequacies.

Q Have you performed studies in this field?

A Yes.

Q And do your studies agree with the conclusions?

A Generally, yes.

Q Is the available date for such studies in banking better or worse than in other industries?

A Better.

Q Why is that?

A Well, there's greater amount of detail, and their [552] various data source. You have the standard reports of income for large cross section of banks which details revenue by category of activity. We have a—information on balance sheets, items in detail for every bank, you have expense items, for certain subject samples of banks you have even greater detail, participating in various Federal Reserve programs, access to even more detail data on prices and costs and on concentration also. So

I indicate, and I have indicated, that these studies suffer from inadequacies there from a standard of perfection. In other words, almost anything, I guess, can be improved, but I think that in general the access to data is superior in this area than in other areas.

Q Have studies in other industries supported the notion that structure and performance are related?

A Yes, but I am not as familiar as those—with those studies in other industries as I am with those in banking.

Q Do the banking regulatory agencies employ the notion of concentration in their analysis of competitive effects—

A Yes, they do. Well, the ones I am familiar with do.

Q And they are?

A I worked for both the Federal Reserve and the Federal Deposit Insurance Corporation.

THE COURT: Within the State of Connecticut could you give me two examples of what is a concentrated [553] area and what isn't from your studies either by county, city or town or SMSA?

THE WITNESS: Well, for example—well, I haven't studied this in the detail that I have with respect to Bridgeport, New Haven, the Norwalk SMSA, for the three—the three largest have a share of 58.5%, where as most of the other deposit shares are up near 80 or above, so that appears to have much less concentration.

THE COURT: All right. Now, what is the difference in performance between the two areas that you are trying to point out to me?

THE WITNESS: Excuse me?

THE COURT: What is the difference in performance?

THE WITNESS: Oh, I haven't really measured the levels of performance, sir.

THE COURT: If your theory is correct and you went out into the field to see the underlying facts to support the theory what would you expect to find out there with respect to performance which would bear out the import of your theory?

THE WITNESS: You would expect differentials in prices, in quality of service, service charge rates, various interest rates.

[554] THE COURT: All right. So you have quality. By that do you mean—say the amount of convenience, the banking office, the quickness with which decision is made on, say, a loan application; rates, give me an example.

THE WITNESS: Rates, service charge rates, service charge on checking accounts, let's say.

THE COURT: Well, between what two figures would you say offhand? Are we talking about pennies or dollars?

THE WITNESS: Well, I think over the—say a year's time, say, a penny or two differential on, say, per item would aggregate up to be substantial and when this is measured by the many numbers of people involved, it becomes substantial.

THE COURT: What was the third?

THE WITNESS: Say rates on loans, various kinds of loans.

THE COURT: What would that be?

THE WITNESS: Automobile loans.

THE COURT: What would you say, a half percent maybe, or more?

THE WITNESS: Yes, I think that would be—half a per cent would be a substantial difference.

[555] THE COURT: Anything else?

THE WITNESS: That's the general kinds of things. Rates paid on deposits to the extent that their different than the ceiling rates, that is, higher rates paid to savers are an indication of greater degree of competition.

THE COURT: You see, the interesting thing in back of all of this is that concentration and bigness automatically means better quality, lower rates and more benefits to the consumer.

THE WITNESS: Not necessarily.

THE COURT: My next question was: Why does that necessarily follow?

THE WITNESS: Bigness per se in concentration are different. I mean, we can have deconcentrated mar-

ket and still have big banks. Assuming that you have a different number, say, in a state, you may have them participating in a large number of markets, they can still be big and still have markets that are not concentrated, so that the two are not necessarily—go together. I mean, you could have a situation with large banks that are either highly concentrated or deconcentrated markets, bigness per se is not the issue, it is the level —the alternatives [556] and what this yields for the customer, and we just believe that the level of concentration and the number competitors improves the quality.

THE COURT: That is a sound economic theory. The more people on the street in the same business, the consumer might shop around. Whereas, if there is only one business in the community or in the area, the consumer to some degree is at the mercy of that person. I understand that. Go ahead.

BY MR. CLARK:

Q Dr. Murphy, there was some testimony this morning relating to the present effect of this consolidation, would this consolidation presently eliminate existing competition between these two banks?

A Within the four-town area, yes.

Q Would the consolidation presently eliminate potential competition between these two banks?

A Yes.

Q Is there a current ongoing effect of potential competition, an effect that could be felt in the local markets that we are talking about?

A Yes, there's the presence of an effective competitor can influence these decisions, and that is a competitor in the wings will tend to have a desirable effect within a market area, [557] within some market area, if it's not presently operating there.

Q Is there also an effect from the present elimination of the potentiality of future deconcentration?

A Yes, it means that the capability of this entry, desirable effect of this entry is eliminated completely.

Q If it is eliminated is it possible that it will ever be recreated?

A Not on the scale that it exists now in terms of the capabilities of the defendants, the banks involved.

Q Dr. Murphy, there has been some testimony, some questions regarding the banking needs of small businesses and individuals, do they customarily require the sophisticated services that some of the larger commercial banks might offer?

A Not generally. A very complicated loan package or international banking services or lock box systems or some of these, say, inventory or payroll accounting systems, these things usually aren't needed by the customer, and the loan limit is much less of a factor. Is not a factor at all.

Q What is the single most important factor in determining the adequacy of performance for the small customer?

A The level of competition in the area.

Q Would you elaborate on that a little bit?

A Well, just very generally, the less concentrated, the larger number of alternatives produces a better result [558] for his needs in terms of service, availability of services and prices.

Q Dr. Murphy, we examined at some length Plaintiff's Exhibits 33 through 60 during your direct testimony, and these exhibits related to the derivations of business by geographic area by certain offices of these two banks, in general what conclusions do you reach regarding the proportion of business which these banks—which the offices of these banks located within the SMSAs that we have talked about derive from within the SMSA?

A Well, in general, these indicate that there's a substantial amount of commuting within the SMSA, there's a substantial amount of business derived by various offices from the general journey to work patterns and shopping patterns and so forth within the area, but there's not too much from outside the SMSA.

Q When considering the totals, the overall business, what is the proportion of business derived by these banks from within the SMSA? Maybe we ought to refer just again to P-30, P-33, for example.

A Well, P-33 refers to the main office of Connecti-

cut National Bank, and for the smaller accounts 90 per cent of the business is within the SMSA.

Q How about for all class sizes, Dr. Murphy?

[559] A That's 90.9% of the number and 85.9% of the dollar value.

Q Is that a substantial portion of the total?

A Yes.

Q Do the other banking agencies—and I'm speaking particularly of Federal Deposit Insurance Corporation—collect and report concentration by SMSA?

A Yes, they do.

Q And do they do it in a manner in which Plaintiff's Exhibits did it, that is, by aggregating the total deposits held by offices from within the SMSA?

A Yes. There is their biannual summary of deposits which is a survey of all banks and their deposit derivations by branch and this information is then summarized and put together in such a way that it's reported by SMSA, concentration figures are given for the largest banks, say, the three largest banks in the area, by SMSA.

Q Is this computed on the basis of total deposits of offices located within the SMSA?

A Located within the SMSA.

Q Does the FDIC report concentration by state?

A Yes.

Q And does it do that in the same way that it does for the SMSA's?

[560]Q Would you refer to P-43, Dr. Murphy?

A Yes. P-43 is the location of the Connecticut National Bank's branch in Orange and it gives a dollar volume and the business derived from various towns, adjacent towns and towns in the SMSA and outside, gives the same percentages for total deposits and total loans.

Q What percentage of total deposits is derived from Orange?

A 52.6%.

Q And what percentage is derived from the other adjacent towns?

A 36.9%.

Q Most of that I take it does come from Milford and West Haven?

A Milford and West Haven would be 30.8%, right.

Q What percentage of total loans is derived from Orange?

A 36.3%.

Q And from all adjacent towns?

A 44.1.

Q And where does the bulk of that come from?

A Bulk of it, once again, comes from Milford and West Haven.

Q Is there some from New Haven?

A Yes, 8.1%.

[561] Q Would you refer to P-46, please, Dr. Murphy?

A Yes. This refers to the Prospect office of the Connecticut National Bank.

Q Where is Prospect generally?

A Prospect is north—

Q Well, that—

A I believe it's in the—

Q That's not in either of the Bridgeport or New Haven SMSAs, is it?

A No. I—as I recall, it's in the—Prospect, I believe, is in the Waterbury SMSA.

Q What is the percentage of total deposits derived by that office from Prospect?

A In this case, 6.9%, and 36.4 come from adjacent towns, the bulk of which comes from the Waterbury—City of Waterbury.

Q And for loans?

A 67.2% comes from the town, 28.6 from adjacent towns and from the City of Waterbury 20.2%.

Q Would you refer to P-54, Dr. Murphy, this relates to the East Haven office of First New Haven National Bank?

A Yes.

Q What is the percentage of total deposits which that office derives from East Haven?

[562] A That's from the immediate Town of East Haven. 62.9%.

Q And from adjacent towns?

A Adjacent town's 30.1% with the bulk of it coming from the City of New Haven, 15.6%.

Q And some from?

A And some also from Branford.

Q And now loans, please, how much from East Haven?

A 56.5%, with adjacent towns supplying 33.3, once again the bulk from the City of Ne wHaven, 20.6%.

Q Finally, from the Wallingford office of First New Haven? By the way, is Wallingford located in the New Haven SMSA?

A No, I don't believe so. No. It's north of the SMSA.

Q What percentage of total deposits come from Wallingford?

A 48.7%.

Q And from adjacent towns?

A 21%.

Q And for loans, please?

A For loans, the comparable figures are: from Wallingford 53%, from adjacent towns 30.5%.

Q Do you reach a general conclusion as to the extent of an area which a branch serves as it relates to the distance of that branch from the home office?

A Yes, it appears that the—examining these various [563] exhibits here, that the farther the branch is away from the home office it seems to have a more dispersed pattern of business, drawing from the greater amount—from the adjacent areas.

MR. CLARK: I ask that this be marked as Plaintiff's Exhibit 116.

(Plaintiff's Exhibit 116 for Identification)

Q Would you discuss this exhibit, Dr. Murphy, relating to total deposits held by Mutual savings banks of Maryland and New Jersey?

A Yes. Plaintiff's exhibit P-116 refers to the deposit composition of mutual savings banks and—In Maryland and New Jersey. These are two states which permit the mutual savings banks to accept demand deposits. There's a column for total deposits, a column for demand deposits and then the per cent demand—demand deposits as a percent total—percent of the total deposits. It shows that for Maryland mutual savings banks that demand deposits are 2.05% of total deposits while for New Jersey the corresponding figure is 2.72%.

I might indicate that this information was obtained from a published report of the Federal Deposit Insurance Corporation regarding assets and liabilities of commercial and mutual savings banks, and that in the definition of demand deposits there is included some amount of what are known as escrow accounts, and that is funds which are collected by the savings bank in [564] connection with a mortgage to pay taxes or to pay insurance premiums, things of that sort. So these figures are somewhat overstated, that real demand deposits that represent customers' checking accounts are less than what's reported on this table.

MR. CLARK: I ask that this be marked as P-117 for identification.

(Plaintiff's Exhibit 117 for Identification)

Q Dr. Murphy, this is the bill which was voted on by the Connecticut Legislature which would have granted the demand deposit powers to Connecticut Savings Banks, would you comment on that as it—on the effectiveness of these powers as they compare to those of commercial savings banks?

THE COURT: Was this passed?

MR. CLARK: No, your Honor, but this was the bill which was voted on and defeated.

THE COURT: How is that of any help to me?

MR. CLARK: Well, I think that we should know just exactly what it is that the savings banks sought and try to assess the effectiveness of it should they in the future be successful.

THE COURT: Well, there's two speculations: one that the savings banks sought this—probably they did; I don't know—but, if, following that line of thinking, the commercial savings banks fostered the [565] passage of the holding company act in Connecticut, and if they did, they are sure not using it, so the first speculation, that there was a lobby on this particular bill and, two, that it may pass sometime in the future—

MR. CLARK: Yes, your Honor.

THE COURT: Was the vote close? Do you have some knowledge of who is going to be elected to the legislature, a lot of directors of savings banks, or something?

MR. CLARK: No, your Honor, and I think that's a very valid point. It's simply not very helpful to expect as to whether or not at sometime in the future there will be a change in the law because of all this uncertainty.

THE COURT: I would say a lot of speculation. Go ahead.

MR. CLARK: I would like Dr. Murphy to comment on just what's in the bill and the significance of these powers should savings banks succeed in acquiring them.

Q Would you go ahead, Dr. Murphy, please?

A Yes. I think the most interesting aspect of this bill can be found in—on page 2, lines 26 through 28, which [566] state "A savings bank shall maintain a reserve fund equal to 100% of its demand deposits, and that they maintain these either in a member of the Federal Reserve System, member bank, or in certain other banks." And which indicates that the funds deposited with the savings banks on demand would not be available to purchase earnings assets since they have to be held 100% in non-earning assets, and that would appear to me to make it—one of two things would happen: savings banks would not find it profitable to operate such an activity because there would be no portfolio earnings from the function or they would have to price them very high in order to make money, sufficiently high that I don't think they'd be competitively viable or they would sustain losses in offering the activity to the public, and none of which would indicate to me that under the provisions of this section of the bill that they would be very effective competitors.

Q What is the relationship also between the assets powers of savings banks and their ability to accept large amounts of demand deposits?

A Well, this relates to some of the discussion earlier with respect to various proposals, to broaden thrift institutions' powers. In general, the problems that have occurred in the last, say, seven or eight years with respect to thrift institutions have occurred because of the imbalances in their structure of their [567] portfolio and their liability structure; that is, they tend to hold most of their assets in very long term form, mostly mortgages and corporate securities, whereas their deposits

are withdrawable, in most cases on the desire of the saver. So what we have is short term liabilities and long term assets.

When certain interest rate patterns occur, in general—in the general economy brought upon by inflation or by monetary or fiscal policy this results in a situation in which these institutions are threatened, they're vulnerable.

Now, most of them have gone towards the direction of doing one of two things; shortening the length—average maturity of their portfolio so they can roll these assets over, in effect, and replace them with higher earning assets or toward lengthening their liabilities, that is, issuing longer term liabilities and deposits.

Now, it would seem to me that savings banks would have substantial problems in accepting the most volatile of all deposit liabilities with the greatest variability in fund flows arising from this with its long term assets, that is, it would be managing these fund flows and managing withdrawals and getting inflows that may reside in the bank or relatively short period of time and investing them in long term assets which have substantially greater risk and their highly liquid, that is, you would need a much more highly liquid asset portfolio in [568] order to manage these very volatile, much more volatile liabilities.

So I question not only this particular bill, it would seem that the activity wouldn't be profitable with a hundred per cent reserve requirement. You would have plenty of liquidity, but no earnings.

With respect to the general introduction of this, and only this, reform for savings banks, I have serious question as to whether it's in the—by itself is in the best interest of the public.

[569] Q Doctor Murphy, you testified last week that commercial banks might take into account when considering expansion into new areas, do you consider that to be a significant consideration?

A Well, it is not—I would check—I would refer back to some of our exhibits regarding expansion in Connecticut, and we can see that expansion by both acquisition and by de novo offices has taken place at a very rapid

rate. The point where a number of banks—there are—located in various parts of the state where they weren't operating, say, 15 or 20 years ago, so it would seem that these decisions, at least in Connecticut, haven't been affected greatly in the past by existence of savings banks, that have been in existence for some time. So we have had all this expansion as it is with the savings banks presence which hasn't seemed to slow down too much.

And in general, I might say that analyses that have been conducted seem to be able to analyze the potential and relate entry with a sample of banks that choose to enter or knows not to enter, to relate this decision to various factors of the kind that we mentioned without including thrift institution offices or existence and be able to analyze it quite well.

THE COURT: Why does it necessarily follow that savings banks might retard expansion? Maybe it encourages it? In other words, maybe commercial banks [570] who are getting saving account business as well as deposits and so forth from, say, the town of East Haven and outlying towns, may sit back and be smug with the idea that there are no other banks in East Haven or Branford or Guilford, then all of a sudden savings banks start popping up and people start withdrawing a few of their savings from the New Haven bank, all of a sudden the board meets and say, "Look, we have to start getting out into that area, four savings banks opened up in those four towns and we ought to look to expansion." So why wouldn't—two things, why do savings banks retard the growth of commercial banks, and two, why wouldn't that be a significant factor that commercial banks don't want savings banks to eat into any part of their business, even though it is not really connected with demand deposits? They just don't want to lose savings deposits.

THE WITNESS: Well, we're—my interpretation of the evidence as it exists for Connecticut is that it hasn't affected that. I think the theory is that there's a pool of savings, and if somebody already has a lot of it, then it might not be a prudent decision to go in there and try to seek it if there's an already established—and it looks

as though, say, the business [571] is not going to grow in the future, that the existence of other institutions there would tend to affect the decision to enter.

My interpretation of the evidence is—is that expansion has gone on and entry has taken place even in the face of existence of savings banks.

THE COURT: That's the point I was trying to make. I thought you were trying to convey the idea that the presence of other institutions, such as savings banks, discourages expansion.

THE WITNESS: No, we don't want to give that impression.

THE COURT: Would you say that it encourages expansion?

THE WITNESS: Would say it is a neutral factor, it doesn't seem to have any affect as far as looking at the exhibits and the evidence.

THE COURT: Well, just a minute. You are saying it doesn't seem to have any effect. I'm not talking about the effect once the commercial bank opens up in the same town as a savings bank, I'm talking about the commercial banks—

THE WITNESS: Decision to enter.

THE COURT: —decision to enter a certain town. [572] It is your feeling, or your opinion based on your knowledge and experience in the field, that bankers really don't pay much attention to the fact of whether there's a savings bank or five savings bank in a particular town, that's like just a neutral thing like so many stop lights in the town?

THE WITNESS: I don't know if it is the same as stop lights, but my interpretation of these exhibits is that savings banks have existed in Connecticut for a long time, maybe longer than commercial banks, and that their existence doesn't seem to have retarded a dramatic increase by number of Connecticut commercial banks of entering into a large number of areas, of representing themselves in towns outside their home office area.

THE COURT: How about within their home office area?

THE WITNESS: Expansion seems to have, you know, just been very rapid. It seems to have followed popula-

tion, and population seems to be an important determinant as far as examining exhibits, especially, say, in this —in these two SMSAs, the proportions of offices to—in and out of the downtown central city area, the changes seem to reflect very closely the [573] population changes.

THE COURT: So, if, for example, in the town of East Haven there's a dramatic increase in population, and we see a savings bank come in, then we see a commercial bank come in, then we see another savings bank and another commercial bank, it is your point that it is the population that's attracting them, not necessarily—

THE WITNESS: Right.

THE COURT: —the commercial bank saying there's two savings banks in East Haven, we better get in there with something?

THE WITNESS: Right.

THE COURT: Maybe they're both reacting to population, though?

THE WITNESS: Yes, and there may be some defensive type movements, to say, well, they're in there, we have got to get in there, too.

THE COURT: All right.

The reason I didn't call a recess, I was hoping that we could finish with Doctor Murphy today, but obviously we are not, is that correct? A few more minutes I'll sit here if that might do it, if you feel you want to ask a few more questions.

[574] MR. REYCRAFT: I'd be very brief, your Honor. How long you going to take, John?

MR. CLARK: I would estimate perhaps 15 minutes, your Honor, 10 to 15 minutes.

MR. McENERNEY: I have nothing, your Honor.

THE COURT: Well, you are traveling a distance, aren't you?

THE WITNESS: Yes, sir.

THE COURT: Well, I'd like to, if possible, avoid that. I really should mention to counsel they don't need a witness to point out things on a chart. I tried to suggest that earlier. I'm more interested in his opinions than telling me that chart 72 has these figures on it, because later on if you tell me chart 72 has those figures, I'll look it up myself.

MR. CLARK: Yes, your Honor.

THE COURT: Why don't we use him for what he is an expert, and we can read charts later, for days, if you wish.

MR. CLARK: Yes, sir. I have two general areas of questioning, and I will try to be brief.

BY MR. CLARK:

Q Doctor Murphy, you were shown—you were questioned about an exhibit which purported to show that there had been an [575] increase in the number of banks on a town by town basis in Connecticut?

A Yes.

Q Just in general, without referring to an exhibit, which banks have been responsible for this phenomenon?

A The larger banks, especially the—well, the top ten.

Q What effect would the elimination of one of those have on—have within the State of Connecticut?

A Well, it would reduce the number of possible entrants into a lot of these towns. As I indicated, a town by town analysis tends to include a lot of what I would call double counting. That is, the same banks would be represented in the market area and counted several times.

Q Let's move on to the Hunt Commission which you have been question about. Would you tell just in general what the current status of the report that that commission rendered is?

A Well, that report was given to the President and —and last December, it is being studied and considered by a task force with its leadership in the Treasury Department, and they are, to my knowledge, considering submitting legislation to go through the legislative process. But this is gained from my reading of the Financial Press and also some contact with my former colleagues on the staff. I haven't any direct evidence as [576] to what exactly their plans are.

Q I take it there is substantial legislative processes to go through even should this become law, is that correct?

A Yes, there would be several different committees, several recommendations refer to changes on a state level, several refer to taxation, which I assume would go to

the ways and means committee, several refer to reorganizing the regulatory agencies which would, I assume, go to the committee on government organization. Several refer to the powers of institutions which would go to the house —well, to the banking and currency committees of both houses.

Q Doctor Murphy, will you assume now that the State of Connecticut is a banking market, how would economists customarily analyze a merger between two banks in that market?

A They would analyze the market shares, they would calculate the total deposits for all banks located in the area, they would then calculate the relevant market shares of the leading banks and they would then determine level of concentration and then determine what the impact of the acquisition would be on that level of concentration.

Q So that you would simply aggregate the market shares of the two banks in that market, is that correct?

A Yes, sir.

Q Would you state in general what the effects of this [577] consolidation would be on a Connecticut banking market?

A It would increase the level of concentration of the five largest banks. It would move up—I'm not sure it would move up to second or third, I don't remember the exact numbers.

Q You were questioned Thursday about economies of scale. Would you briefly explain the meaning of that concept?

A Well, the motion of economies of scale refers to the relationship between changing level of output of something a firm produces and the effect of increasing that level of output on the average cost of production, and economies of scale are said to exist when the average cost of production falls as an increase in output takes place. Costs and output are related—as output increases, average cost would fall.

Q Have you conducted studies in economies of scale in banking?

A Yes, I have.

Q In general, what were your conclusions?

A In general, the conclusions related the level of cost

—level of output, a number of different other variables which are considered to influence cost of operation, such as wage rate paid and also the extent of branching, and generally we found that economies of scale take place when a fixed number of branch offices expand output. But that as—if output expands by taking on new offices, that there's an offset to the scale economies [578] that in some cases would completely offset, so average cost would not be affected at all.

Q Is there a general relationship between the size of a bank and economies of scale? At what point in the size of a bank do economies of scale become less significant?

A Well, for branching organization recent tests that were performed indicate that this would be in the area of, say, 40 to 50 million dollars in total deposits.

Q Based on your studies and on your knowledge of defendant banks, then, would you expect this consolidation to result in significant economies of scale?

A No.

MR. CLARK: I have no further questions.

THE COURT: Mr. Reycraft?

RECROSS EXAMINATION

BY MR. REYCRAFT:

Q Doctor Murphy, when you were referring to commercial banks and saving banks opening branches in New Haven, you referred to the possibility that one or the other would open such a branch for defensive reasons. Did you mean by that that it would open that branch to defend its business against competition from the other?

A It would enter an area, or establish an office, in response to someone else having opened there.

[579] Q Right. You testified that if a saving bank opened an office in East Haven, that a commercial bank might open one for defensive reasons?

A I think I just said that some—some branch openings take place for defensive reasons, I don't think I was referring specifically to mutuals.

Q You don't think that a savings bank might open a branch to defend its savings from a commercial bank or a

commercial bank would open a branch in East Haven to defend its saving accounts from a savings bank?

A I don't know.

Q I thought that's what you were saying?

A I didn't mean that. I meant the general notion that we had is that entry takes place in response to things that influence an investment decision, and that's generally true, but once in a while I think we have cases in which—say one institution has responded to that and another one, instead of responding directly to the economic stimulus responds to what the other institution has done.

Q And you think that a commercial bank would ignore the presence of a savings bank in a town making a decision to enter, even though it competes with that savings bank for about 80% of its business, is that right?

A I don't know if it competes 80% of its business.

[580] Q You testified earlier that it did with respect to Connecticut National, that 79%, I believe, of its business is in competition with savings banks?

A I'm not exactly sure about those numbers.

Q Assume that's right, you would ignore savings banks competition—

A I just indicated that expansion has taken place at a very rapid rate, much more rapid rate amongst commercial banks than savings banks, and savings banks have been there, so it doesn't seem to have retarded their activity in the past here.

Q In your opinion, would a commercial bank be prudent to ignore that competition when making a decision to enter a new town?

A I don't know if it would be prudent to ignore that, but I don't know if it would be imprudent to ignore a lot of other things, too, like the number of stop lights.

MR. McENERNEY: Nothing, your Honor.

[581] BY THE COURT:

Q Doctor, I think I have a few questions and if the answers are brief, I think we can move along quickly. I suppose whenever you are analyzing a merger of banks, that you have done many times in your life, as between this

table and that table concerning your opinion, you balance factors?

A Yes, sir.

Q Very seldom is it one side has all the advantages over the other side. It has happened, but in most mergers there's some benefits and there's some disadvantages.

A Yes, sir.

Q And you balance those, do you not, and come out with a conclusion?

A Attempt to, yes, sir.

Q All right. Did you do that in this case?

A Yes, I guess so. I—my conclusion is general.

Q I didn't ask you that. Did you do that?

A Yes.

Q Did you find that there was a balancing process that you went through?

A I couldn't find too much to balance, sir.

Q Now I know what's on this side of the scale. What few things are on the other scale would you just list them for me?

[582] A I couldn't really come up with any in this case.

Q You say by that it's your opinion that there's absolutely no advantage to this merger, as you see it?

A From a competitive point of view—I think if you—

Q From any point of view?

A Well, I don't know about any point of view.

Q Now, I would appreciate—just say, I agree, I disagree, or I have no opinion—

A Okay.

Q —to these questions. Do you agree that the consolidation of the applicant banks would give the resulting bank some 71 branches—branch offices to serve the two southwestern counties of Connecticut, that is, Fairfield and New Haven?

A I have to check, sir.

Q This breadth of coverage, assuming that it's so, will enable the applicants to achieve the goal at which this application is aimed, namely, to become a regional bank of sufficient size to compete effectively in the market—in its market. Do you agree or disagree?

A I disagree.

Q Applicants hope, by combining their resources to continue to serve the customers—who are now outgrown their individual capabilities and with combined resources to compete more effectively with the larger state-wide Connecticut banks [583] and with the out of state banks that canvas the area for profitable banking business. Do you agree or disagree?

A Disagree.

Q Do you agree, constituting as it does, meaning Connecticut, such a lush banking market the large billion and near billion dollar institutions in New York, Boston and Providence have convassed it from border to border in search of business and rightfully so. Do you agree or disagree?

A I agree they may have canvassed it.

Q To withstand the competitive inroads of the out-of-state institutions the local banking structure needs more large banks. Do you agree or disagree?

A I disagree.

Q You disagree. By consolidation of these two defendants these banks—new and better services will be offered to their customers thereby making the resulting bank more competitive.

A Disagree. It seems to me they both offer a full line.

Q The applicant banks do not compete substantially even in the three small areas where each operates one or more branch offices?

A I disagree.

Q One of the advantages of this consolidation is the continuing existence of multiple banking offices?

A I agree.

[584] Q The experience of the applicants in entering open towns by de novo branching in recent years reveals that rural communities cannot support or justify the high initial cost of opening a branch nor justify the protracted operation—operating period through which it must function before it becomes operationally viable?

A I have no opinion, I don't know what relevance it has.

Q Let me read the next sentence: These economic considerations, from a prudent point of view, foreclose these towns to de novo branching in the forseeable future?

A I think I disagree with that one. Technological advances in terms of scaling down the amount of investment necessary to enter an area are taking place.

Q This application does'nt present any problem of concentration of banking resources?

A I disagree.

Q It is well documented that out of state banks, particularly those located in New York and Boston, largely finance the industrial development in Connecticut and drain the banking profit from the state.

A I disagree.

Q The only method open to applicants to compete with those banks is to consolidate their resources, raise their [585] lending limits and provide the sophisticated banking services demanded by industrial and commercial customers.

A We have indicated that those industrial and commercial customers have alternatives.

Q So you disagree?

A I disagree with that one.

Q De novo branch branching, even if it were feasible, would not serve this purpose.

A That's true, I agree.

Q You agree with that?

A Yes.

Q Now, one last question: Assuming strictly for the sake of argument that holding company laws were not available to these two applicants, and assuming just for the sake of argument that toehold acquisitions were not open to them, by concrete proof that they were unable to buy the banks that you think should be bought, assuming those two facts are facts, would you change your opinion as to whether or not this merger would be a feasible one?

A Would that be forever?

Q No, right as you sit there on the stand.

A No, I don't think in total it—no—I don't know that those things that will happen will be in existence forever.

THE COURT: Thank you gentlemen, thank you [586] Dr. Murphy. We will meet again Thursday morning at 10:30 a.m.

(Whereupon, the Court was adjourned at 4:20 p.m.)

[587]
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

versus

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 19th, 1972

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[588] Appearances:

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[589] THE COURT: Are the parties ready to proceed?

MR. CLARK: Yes, your Honor.

THE COURT: One matter that's come to my attention, it might be appropriate to mention it at this time, is the motion of the Special Master and Court-appointed expert to fix compensation. I have several questions. One, have counsel had an opportunity to study it; and two, would they like formal argument?

MR. REYCRAFT: I don't believe I have seen it, your Honor. May we take a look at it?

THE COURT: By all means.

MR. REYCRAFT: And then comment?

THE COURT: I can hear you any time on it. It doesn't have to be today.

MR. REYCRAFT: Thank you.

THE COURT: Do you have a copy of it?

MR. REYCRAFT: I don't yet, your Honor. It may have been served on some of my colleagues.

MR. BELL: I have a copy, and as a matter of fact, I did not bring it by error this morning, but I'll be glad to provide one, and I wanted to discuss it with my client. I assume Mr. Stone does, too.

MR. STONE: I got it in this morning's mail.

THE COURT: Why don't we say sometime next week we'll take a few minutes out to go over it?

[590] Mr. Clark?

MR. CLARK: Your Honor, there are a few exhibits which our witnesses did not comment on and which I would simply like to say a few words about. I would begin with P-27, which is a portion of the defendants' application to merge; and this exhibit deals in some detail with their—with the defendants' own assessment of the economic growth, prospects for economic growth in Connecticut, and I would point out that their—their assessment, their opinions, their description of the economy, the growth prospects therein are consistent and, in fact, much more glowing in some respects than they are—certainly consistent with our own position, that is: that the economy has been very vigorous and certainly can be expected to continue to be so.

I would turn then to P-95, the last exhibit that Doctor Murphy discussed was P-94. Now, P-95, 96 and 97 are the advisory reports rendered by the Department of Justice, the Board of Directors of the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System.

And, as you know, the Bank Merger Act requires such advisory reports on the competitive aspects of any proposed bank merger to be made to the bank [591] regulatory agency who is going to be responsible for the approval or disapproval.

P-95 is the Department of Justice's advisory report. Our conclusion, as you could—as is no doubt evident is—and I note on Page 5 says: "Because of its elimination of existing and potential competition between the two banks and the effect on concentration, we conclude that this consolidation would have a significantly adverse effect on competition."

P-96 is the report of the Board of Directors of the Federal Deposit Insurance Corporation. Much of their report deals with the factual material relating to the areas involved, and then their conclusion, also, is as follows: "The Corporation concludes that the proposed transaction would eliminate existing competition between First New Haven and Connecticut National or close the possibility of increased competition between them in the future, strengthen the dominant position of each bank in its present

market and encourage the concentration of commercial bank resources in the State of Connecticut, the Corporation concludes that the proposed transaction would have a substantially adverse effect on the commercial banking in southern Connecticut, and in the [592] long run, on the State as a whole."

P-97 is a report of the Board of Governors of the Federal Reserve System, their conclusion is as follows: "Consummation of the proposed consolidation of the Connecticut National Bank, Bridgeport, and the First New Haven National Bank, New Haven, would eliminate a significant amount of existing competition, particularly in the local Bridgeport and New Haven banking markets. Moreover, there is potential for greater competition between the two banks through de novo branching or through merging with other possible alternatives in which the anticompetitive effects would be considerably lessened. The subject proposal would join the fifth and seventh largest banks in the state creating a bank which would rank third, holding about 12% of the state's total commercial bank deposits, thereafter, the four largest commercial banks would hold 58% of total deposits in Connecticut. Such a move would continue the concentration of banking resources in Connecticut in the large banks. Overall, the competitive effect of the proposed consolidation would be substantially adverse."

And I might refer, your Honor, to the—to the Board's description, definition of their term "substantially adverse" as found in 12 CRF 250. [593] That term as they use it is defined, "The term 'substantially adverse' is used to indicate the Board's view that the proposed transaction would have such actual or potential anticompetitive effects as to foreclose approval unless clearly outweighed as specified in Paragraph 5(b) of Section 1828(c) of 12 U.S.C."

Now, I—much of the remaining exhibits are portions of depositions which I will not comment on.

I would like to refer specifically to P-99, your Honor. This is an exhibit—a document obtained from the files of First New Haven National Bank written by two of their officers entitled: Corporation Organization for Growth.

And without reading the whole document, your Honor,

it—it refers to conditions then existing in Connecticut, and that was as of June, 1969. And the opinion of these two officers that mergers between large banks in the State would be foreclosed from then on. And they state: "It seems clear that the major banks in Connecticut will be allowed to merge only with the tiniest institutions, certainly not more than ten million in deposits, and even these will be subjected to close scrutiny. The message rings clear that the avenues for growth of large banks will be [594] restricted to de novo branching in this State, at least, we cannot visualize such aggressive banks as CBT, Hartford National or Connecticut National restricting their branching, their activities to their present market areas. These banks have gone on record as desiring statewide representation. If banking in Connecticut does move towards seats of power stance, "in paren," (Hartford, New Haven, Stamford, Bridgeport, for example,) we can expect that these banks will acquire seats in each of these power centers."

Now, the memorandum continues and it discusses means by which First New Haven could enter small towns, towns with small population, and these two officers conclude and recommend that a so-called mini branch or motor branch concept be utilized by which entry into these towns can be accomplished with a minimum of expense.

Then these gentlemen continue, under a heading: "Organizing for Growth". Form a registered bank holding company, not a one-bank holding company, but a registered one, to qualify under this organizational form two independent banks are required wherein the holding company directly or indirectly owns or controls power to vote 25% or more of the voting shares of [595] each of two or more banks.

"The flagship bank would be the First New Haven. Traditionally, a holding company acquires existing independently owned and operating banks, but why be bound only to existing banks, why not establish newly chartered independent commercial banks in unbanked and banked towns as a part of the holding company? It will then be possible and legal for any one of the independent banks to branch within the town it is located. For example, if such

banks are formed in Hartford, New London, Stamford or Bridgeport, there is no legal restriction to branching by the independent within the town."

Your Honor, I don't want to read all of this. They discuss this de novo concept via the holding company in further detail, and conclude with the following: "In any event, we are convinced that we cannot insulate our bank from encroachment by larger commercial banks of Connecticut in light of recent Justice Department actions."

[596] THE COURT: I am not sure it's relevant, but would I have access ordinarily to what the individual members of the Board of Directors had to say during these meetings, that is, the minutes of the meeting with respect to the Board.

MR. CLARK: Well, the defendants may do that. It's clear, your Honor, that this concept, the holding company concept, was not adopted by First New Haven, and it perhaps was not considered by the Board of Directors. This is a recommendation by two of that bank's officers, and it did not reach consideration by the Board of Directors, and I think—although here I am arguing—the time factor involved—1969— we note that discussions with other large banks of the state begin at about that time. In other words, the merger concept did have priority with First New Haven and this document was written on the assumption that merger would not be possible. But soon after it was written, merger talks did begin. It appears that there was no consideration of the concept at the highest levels of the bank, but I think that the document is highly relevant. It shows, number one, that the concept—although not yet used and not used at that point, it was certainly one that this bank had considered, and we contend, your Honor, that if mergers [597] are denied, mergers of this kind, this is our contention, that banks would turn to alternatives, perhaps less desirable means of expansion, but certainly more competitive—

MR. REYCRAFT: May I comment briefly, your Honor? We will call as a witness in our case the author of this document. We don't think it proves anything. I have not objected to it on the ground that the discussions issue to—Mr. Clark referred to generally, but it is a fact that no-

body asked that this memorandum be prepared. It was not submitted to the Executive Committee or to the Board, nor was it ever acted upon, but we will bring that out through witnesses in our case.

THE COURT: Well, I assume when two large firms or banks or companies merge that throughout the proceedings before the final discussion is reached, that there are different reports submitted to the controlling body, different opinions expressed, the pros and cons, some non-legal, some legal, so I suspect, without in any way indicating what weight I will give, that—or the two officers that presented this document—maybe there were two others who were presenting some other opinion, and two others who were working on some other theory, and after all, this was June [598] 1969, we're—let me put it this way: I would be surprised if the controlling authorities didn't ask for all sorts of opinions from everyone.

[599] MR. REYCRAFT: In fact—

THE COURT: And weigh it and judge it and gauge it and talk it over with lawyers and accountants before a final decision is reached.

So, again, without unduly characterizing the work, I assume that there were other officers that approved, because this merger would never have been agreed upon unless there were sufficient members of the controlling bodies that controlled the vote.

Now, as I said before, I'm not sure if it is relevant, but if there was great dissention on the board of directors and pressures put on from outside sources and so forth, I might be interested in that. I'm not sure I would be, but—let me put it this way: It is difficult for me to see this type of pressure with two large banks as I could foresee with a large bank and a small, little bank in some small town getting some economic and maybe other pressures to merge.

But if there was great dissention and large debates, and if it is relevant, I'd like to know about it. If there were no great feelings against the mergers by the men who we assume are looking out for the best interests of the banks, and it is not relevant, I don't care to know about it.

[600] MR. REYCRAFT: I understand, your Honor.

THE COURT: Go ahead, Mr. Clark.

MR. CLARK: Yes, sir. We certainly wouldn't dispute the officers of both banks—found this merger to be their first choice, and I certainly would be surprised if there was substantial disagreement with that.

Our—our contention is that while it may be their first choice, it is not the only choice which is available to them, and that it is a highly competitive and, in fact, illegal choice, and if this Court should so hold, these banks might well turn to the alternative, more competitive choices, one of which was discussed back before these discussions began.

These depositions, your Honor, I would only—only refer to them, there are portions of a deposition of Alexander Hawley, President of Connecticut National Bank, of William Peters, Senior Vice-president in Charge of Operations of Connecticut National Bank, and in that connection I would refer to P-103, which is a document prepared by Mr. Peters about four years ago, and it is entitled: "Effect of New York Banks on CNB Market Area," and in it he states that he and another gentleman visited four branches of CNB in southwestern Fairfield County, Westport, Darien, South Norwalk [601] and New Canaan. In general, his conclusion was—I'll read a portion of it—"Darien and New Canaan were mirrors of Westport, the same situation exists in these towns concerning the influence of New York banks, our main competition in all three towns comes from the firmly entrenched old-time local banks that have either been merged with Fairfield County Trust or still independent, Westport Bank and Trust. Of all four towns only one, New Canaan, indicated the existence of competition from New York against which we might compete. Mr. Canel indicated that he received a deal of competition on car loans."

There are portions of a deposition of William Krafchik, Vice-president in Charge of Corporate Planning, Connecticut National Bank, and of—deposition of Bruce Taylor, Marketing Director, Connecticut National Bank, and three exhibits used in the course of that deposition

also given, two of these are lists of banks which—Mr. Taylor as Marketing Director keeps tabs on in terms of the rates paid on interest—on savings accounts or service charges on checking accounts.

There is a—portions of a deposition of John Field, Chairman of the Board of Connecticut National Bank, of James Terzakis, a Vice-president in marketing [602] aspects of First New Haven, and of Edward O'Shea, Senior Vice-president in Charge of Retail Division, Connecticut National bank, of—and of—I don't know whether I mentioned Mr. Chadwick, the President of First New Haven.

Also included are several branch applications filed by these banks relating to some of their de novo branches, and these show the factors which are considered both by the banks and by the regulatory agencies in granting branch approvals.

The last exhibit that we marked, your Honor, was P-117. I would like to mark for identification a few more.

THE COURT: Why don't you mark them as full exhibits if there's no objection, rather than go through a laborious—

MR. REYCRAFT: I don't know what they are, your Honor.

THE COURT: —procedure with the clerk.

MR. REYCRAFT: I don't think I have ever seen these.

MR. CLARK: These are—we want to include in the record, your Honor, annual reports for two years from both banks, 1970 and 1971. And P-118 would be copies of two pages from an FDIC publication, Assets [603] and Liabilities, Commercial and Mutual Savings Banks, December 31, 1971; and it is a detailed breakdown of the balance sheets, assets and liabilities and capital accounts of all Connecticut commercial and mutual savings banks.

And the other—our purpose, your Honor, is to provide in some detail a comparison of the type of portfolios, loans which—which the two types of institutions make.

For example, one can look at total assets and see some similarity, 6.4 billion for commercial banks, and 6.7 billion for savings banks. But when one looks at the breakdown of those assets, there are substantial differences.

For example, cash and reserves held by commercial banks are 843 million, held by savings banks are 92 million, we think this is significant in that it shows the more liquid portfolio held by commercial banks. It shows that their loan portfolios require much more liquidity in the form of cash.

A comparison of the loan portfolios as shown in this exhibit shows that almost 85% of total loans of the savings banks held in real estate loans, a substantial portion of which are insured real estate loans.

[604] For commercial banks, on the other hand, less than one-third of their loans are real estate loans, and almost none of which are in insured real estate loans.

This exhibit also shows more than one billion dollars in loans to individuals held by commercial banks and 200 million held by savings banks. It shows more than one million dollars—billion dollars in commercial and industrial loans held by commercial banks compared to almost nothing held by savings banks.

So we—and, of course, once again, it shows in terms of deposits that approximately 50% of total deposits held by commercial banks in the State are demand deposits, and, of course, virtually none of those held by savings banks are demand deposits.

But this is a more detailed breakdown of the assets and liabilities of these two types of institutions, which we think is quite helpful.

That would be 118, and then all the other exhibits, 19, 20, 21 and 22, are copies of annual reports of the two defendants.

THE COURT: Very well, they all may come in as full exhibits.

(Plaintiff's Exhibits 118 through 122 were marked in evidence.)

[605] THE COURT: And that would take us to what number?

MR. CLARK: 22. 122.

And, your Honor, there were two exhibits which we marked Tuesday which I would now move for admissions, they are P-116 and P-117, I'll move that they be admitted as exhibits.

THE COURT: Any objection? I thought I admitted 117?

MR. REYCRAFT: We have no objection to those.

THE COURT: Very well, both may come in as full exhibits.

(Plaintiff's Exhibits 116 and 117 were admitted as full exhibits.)

MR. CLARK: Your Honor, I understand Mr. Blackford will be here in a very few minutes.

THE COURT: Have you completed your presentation?

MR. CLARK: Yes.

THE COURT: Would you like to say anything?

MR. REYCRAFT: Just brief comments on these exhibits. P-103, for example—the exhibit shows the monthly clearings in 1968, a hunderd and sixty-three million, four hundred and fifty-seven thousand, forty-eight dollars through New York, which is 67.21% of the total, and Exhibit 107, which Mr. Clark referred [606] to as a list of banks that Mr. O'Shea, the Marketing Vice-president of Connecticut National, keeps track of, there are 19 banks on the list, as I read it, which he apparently appears, according to Mr. Clark, to think are his competitors, and they certainly include banks outside of the SMSA.

On P-118, which is a Federal Deposit Insurance Corporation report on the assets and liabilities of commercial and mutual savings banks, it shows that in Connecticut the total assets of insured commercial banks are six billion, three hundred ninety-six million, five hundred ninety-five dollars, and that the assets of insured mutual savings banks in Connecticut are more than that, there are six billion, seven hundred and twenty-four million, two hundred and fifty-nine thousand dollars, so we have no objection to any of these exhibits.

THE COURT: Very well.

MR. CLARK: I would only note that on the list of banks shown in that—in P-106 and 107 as competitors, the New York banks are not shown.

THE COURT: Very well.

Mr. McEnerney, would you like to say anything?

MR. McENERNEY: Nothing, your Honor.

THE COURT: Any defense counsel?

[607] Very well, do you suggest a recess until your witness comes?

MR. CLARK: If your Honor please, Mr. Blackford should be here in five minutes.

THE COURT: Yes, I'll wait to hear from you.

(Recess taken.)

THE COURT: Are we ready to proceed?

MR. CLARK: Yes, sir.

THE COURT: Very well.

MR. CLARK: Call Mr. Benjamin Blackford.

[608] BENJAMIN BLACKFORD, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Will you state your full name and address for the record, please?

THE WITNESS: Benjamin Blackford. Skyridge Road, Greenwich, Connecticut.

DIRECT EXAMINATION

BY MR. CLARK:

Q What is your occupation, Mr. Blackford?

A I'm President of the State National Bank of Connecticut.

Q What are the approximate total deposits of State National Bank?

A Around 380 million.

Q What rank is your bank in the State?

A Fifth. In commercial banks?

Q Yes. Can you describe generally where you operate offices?

A From Byram, Connecticut, west, a subdivision of Greenwich, east to Wallingford, which is north of New

Haven, and north to—north of Danbury up as far as New Milford.

Q Your bank is headquartered where?

A Bridgeport.

Q Has it always been headquartered in Bridgeport?

[609] A No.

Q How did you come to operate in Bridgeport?

A Back in 1960—this is under the national charter, now—we merged with the then Black Rock Trust Company, which is a Bridgeport bank, and as I recall, it was in 1962 under the federal statutes we could move the main office within a 25 mile distance, and we moved it from then Stamford main office position to Bridgeport, to the Black Rock Bank office building where we are now.

Q So you acquired a bank in Bridgeport, is that correct?

A By merging, that is correct.

Q How large—well—was that bank at that time?

A I think the total footings around 15 million, about 14 million, let's say, in deposits.

Q Was it a small bank compared to the other banks operating in the city?

A In 1960 there were several banks of comparable size in Bridgeport, plus the larger commercial banks, plus the larger mutual savings banks.

Q Was it substantially smaller, for example, than Connecticut National or City—then City Trust Company?

A Yes.

Q Have you expanded your operations in Bridgeport since this time?

[610] A Yes.

Q Does your bank now have a larger proportion of the Bridgeport area business than it did when you acquired that bank?

A Yes.

Q Are you in the process of erecting new headquarters—space in this city?

A On a lease business, we're not erecting, we're leasing 40,000 square feet.

Q And where will that be?

A Down by the railroad track.

Q That's this new building that's going up right here?

A Yes.

Q 40,000 square feet?

A Yes.

Q But you aren't building it, you say?

A We're a tenant, F. D. Rich and Company is building it and owning it.

Q And you will lease the space?

A Long-term lease.

Q Why are you doing that rather than buying the building?

A We don't want to tie up that much capital.

Q Will you explain the relationship between State National Bank and your parent company?

A In June 30th or July 1st of 1968, I entered into an [611] agreement with the executives of Sperry Hutchinson Company whereby I would recommend to our shareholders an exchange of stock of theirs for the bank—our own shareholder. If concerning—a successful exchange took place in the proper percentage, we would then become a subsidiary of Sperry Hutchinson Company. The offer was presented to our shareholders and it was accepted by them, a majority, and we became a—what you might call a subsidiary of Sperry Hutchinson Company on October the 1st, '68, as I recall.

And today their ownership represents about 99.6% of the outstanding shares.

Q Will Sperry Hutchinson have to divest State National in the future?

A Yes. We didn't fall under the grandfather clause of one bank holding company legislation, and I am a director of Sperry Hutchinson Company, and the Sperry Hutchinson Company has indicated that—its intention to divest itself by—I think it is 1981.

Q Perhaps we ought to elaborate on that. There was new bank holding company legislation passed, is that correct?

A Subsequent to our being acquired by Sperry and Hutchinson Company.

Q And does that law give guide lines or standards by which—under which a company can hold a bank—be a bank [612] holding company?

A I presume so, I don't know. All I know is that we don't qualify.

Q Sperry Hutchinson doesn't qualify as a bank holding company?

A Or—can if it wishes to, but it doesn't want to. I think there's a choice of some of these companies that are in this position where they want to be a bank holding company or they want to stay in the mercantile business, so to speak.

Q They would have to leave the mercantile business?

A And qualify—as I understand the regulation of the Federal Reserve for—of the holding company going into other busines other than a banking business, per se.

Q Am I correct, then, that Sperry and Hutchinson will have to divest State National within what, 8 or 10 years?

A About 9 years.

Q What are some of the ways in which this can be accomplished?

A In the first place, Sperry and Hutchinson Company doesn't want to divest itself of State National Bank, and, you know, nine years is a long time and a lot of changes could take place, laws could change, too. Frankly, we haven't discussed it—that yet.

But from my own opinion, there'd be several ways. [613] They could distribute the stock to the shareholders of Sperry Hutchinson Company, or you could have an underwriting, secondary—what they call a secondary—I don't think a corporation, unless it was a banking corporation, would buy the bank, because then it would find itself in the same position that Sperry Hutchinson Company is presently in, and there are some other eight—some 800 other companies in the same position, owning banks. This is not an unusual company.

Q There divestiture to other banking company?

A I would think so, foreign or domestic, but the intention is that—as expressed by the management of Sperry Hutchinson Company—that they will at such time

as it is—becomes necessary, to distribute the ownership so that in no way will it interfere with the present business, business commitments or the type of institution that has been run for many, many years. They went out on an investment basis, that is not the first bank they've owned.

Q Did State National engage in merger discussions with First New Haven National Bank?

A Yes—merger discussions to the extent—from the management level.

Q But those discussions didn't result in agreement, did they?

A No. That was back in '68.

[614] Q Since that time, have you, as chief executive officer of State National, engaged in preliminary merger talks with any other of the ten largest banks in the State of Connecticut?

A You know, now you are getting down to what I consider privileged communications. Because when you negotiate on public institution or don't negotiate—and we're a listed company—from a record point of view, I think I got a problem, Judge.

THE COURT: Well, of course, on the surface the question calls for a yes or no answer, and I at first blush cannot see how a claim of privilege would insulate you from the answer.

On the other hand, I'll give you an opportunity to talk to a lawyer if you want.

May I ask this, Mr. Clark: after this yes or no answer, let's just assume for the sake of argument he answers: no, that would end it? I mean that would answer the question, would it not?

MR. CLARK: Yes, sir.

THE COURT: If he answers: yes, do you intend to go into the companies with which he spoke?

MR. CLARK: No, I don't.

THE COURT: Do you intend to ask him what was discussed?

MR. CLARK: No, I don't.

[615] THE COURT: Just assume for the sake of argument he answers: yes, what would your next question be?

MR. CLARK: I wouldn't have any more questions, your Honor.

THE COURT: Oh. Well—

THE WITNESS: Can I ask a question, Judge?

THE COURT: Yes, go ahead.

THE WITNESS: Would you repeat your question again, please?

Q Has State National engaged in preliminary merger talks, that is: you or any other officer of your bank with other banks or officers thereof?

A I'm not trying to be difficult, but I'd like a definition of preliminary merger talks, because in the business, you know, it's going out for a date, you are always talking and doing this—what are the possibilities of this and what are the possibilities of that, if you call that merger talk, I think every banker in the State would say: yes. If you are going down to the basis of how would management line up, who'd be the chief executive officer and what would the per share—or if it is a cash purchase—would be, that's another thing, you see, so I mean—

THE COURT: I think there's understandable confusion.

[616] A And what time, too?

Q Since your discussion with First New Haven National Bank?

A Well—let me explain the First New Haven Bank because Frank Chadwick's here, that was between management up to a point of view of an accounting point of view, and we never got to the board of directors or anything else. The banking business is peculiar, very often you effect a merger and the board doesn't know anything about it until you present it to him, because of the confidence in the industry.

Q Have you had discussions like that—like those you had with Mr. Chadwick with other banks?

A No.

Q But you have had—

A Not of that nature.

Q But you have had had preliminary—you have discussed the matter with other officers of other large banks, have you not?

A Large banks?

Q Yes.

A What realm of discussion? I mean—I wouldn't be absolutely fair with you, but—being a convention or a luncheon or something like that, say, wouldn't be a good idea to get together and we could do this and do that.

[617] Q That's the type of conversation—

A It doesn't go any further.

Q Have you had discussions like this?

A Yes, it's common in the industry, I think everyone in the banking business have them.

Q It is common in this industry, then?

A Sure. Even the mutuals do it. So I mean—

Q Have you discussions relating to the possible terms of merger with any of these officers?

A No.

MR. CLARK: I have no further questions, your Honor.

THE COURT: Mr. Reycraft?

CROSS EXAMINATION

BY MR. REYCRAFT:

Q Mr. Blackford, you have testified that State National Bank is a wholly owned subsidiary, I believe of S&H?

A No, partially owned, about 99.6%.

Q It was acquired by tender offer, I assume?

A Right.

Q Would you state for the record what the approximate total assets of S&H is?

A Well, that's—it is all according to how you do the accounting. See, we don't show up in there—we only stock [618] on the stock—on an investment basis.

Q You are a consolidated subsidiary?

A Earned three hundred thirty odd million a year after taxes—I mean thirty-three—thirty-three million after taxes with one area of sales of three hundred odd million, then you take the furniture and the—and other subsidiaries, you could put on another hundred and fifty million in there exclusive of the bank and exclusive of our insurance business.

Q So S&H total sales, exclusive of the bank, are in the neighborhood of 450 million a year?

A That's within the ballpark.

Q And its net profits after taxes is how much?

A Exceed 30 million dollars, they have for the last two or three years, it is a registered company, it is on the New York Stock Exchange, it's a public company.

Q Would I be correct in understanding your present position under the Bank Holding Company Act to be that S&H has filed an irrevocable declaration of an intent to divest the bank so that it could make other acquisitions during the period between now and 1981?

A Under the present law, under the present statute that is on the books today, that is correct.

Q This enables S&H to make other acquisitions—

[619] A That's right.

Q —is that right? If they had not filed that declaration, they would not be able to make any other non-bank acquisition until the end of the ten-year period?

A I don't believe that is correct. I think if they want to make an acquisition, then they'd have to get a consent of the Federal Reserve Board to permit it.

Q So they filed this irrevocable declaration in order to free themselves of certain restrictions?

A Supervisory restrictions.

Q Right. You have referred to the possibility that a foreign bank could acquire State National Bank, is that correct?

A Could acquire any bank in the country.

Q I'm not asking you whether you are having any discussions.

A No.

Q This is one of the things that has crossed your mind, that a bank from England or Japan or Canada,

for example, does, according to your understanding, have —is allowed, under U.S. laws, to acquire a bank in the United States?

A Well, I'll answer that this way: rumor has it there's a bank in Bridgeport—rumor, now—has been acquired by a foreign institution, but we also know in New York some foreign interests acquired a bank down there, too, recently.

[620] Q You know the Barclays Bank of England made an offer to acquire Long Island Trust Company?

A That's right.

Q So it's clear this is permitted under U.S. law?

A To my knowledge.

Q So this is a possibility. So that it is possible that whatever S&H does with State National, that it wouldn't necessarily result in a merger with another Connecticut Bank, isn't that right?

A Will you repeat that again?

Q Yes, sir. Because of the possibility that S&H could sell the bank, State National Bank, to a foreign bank, it could, as you testified, have a secondary distribution of the stock, there are ways that S&H could divest itself of State National Bank without having it merge with another Connecticut bank, isn't that right?

A Oh, yeah, I would say so, yes.

Q Mr. Blackford, did you ever have occasion to express any views to the Department of Justice on any acquisitions by Hartford banks in the State of Connecticut?

MR. CLARK: I object, your Honor, it is irrelevant, and certainly exceeds the scope of the direct examination.

THE COURT: What would be the purpose of this?

[621] MR. REYCRAFT: I believe I can establish that he—he did, your Honor—that he thought that Hartford National Bank's acquisition of a bank in Fairfield County was undesirable and the Department of Justice took no action.

THE COURT: How would that be relevant?

MR. REYCRAFT: Well, I think it shows an inconsistency in the approach that the Antitrust Division has taken to bank mergers.

THE COURT: Well, I suppose that maybe Mr. Clark can put on another witness that said he was for it and then we will get two other banks who said they were against it, I could be here for a year listening to testimony as to why the Antitrust Division of the Justice Department did or did not act, and even get down to different philosophies by the head of the Antitrust Division so there's just so many—

MR. REYCRAFT: I withdraw the question, your Honor.

THE COURT: I would think there's so many variables that go into a decision. I don't mean to cut you off using this man as an expert if you wish.

MR. REYCRAFT: I would like to do that, your Honor.

[622] THE COURT: I'm not saying he is an expert, I'm just saying if you would like to establish him as one for purposes that are relevant to me, not to some other merger of the Hartford bank. I think I have my hands full with these two banks without getting into the other mergers that occurred. Except that they have occurred. And I am aware of that.

MR. REYCRAFT: All right. I would then, your Honor, with your Honor's permission, like to examine him on some of the matters which are within his expertise, I believe.

THE COURT: Well, you can call him as your own witness.

MR. REYCRAFT: May I do it now, or shall I call him back?

THE COURT: He's here, why bring him back?

Q Mr. Blackford, are you familiar with the phrase "standard metropolitan statistical area"?

A I'm not.

Q You aren't?

A No.

Q Have you ever heard that phrase before?

A I have heard it, but I don't know what makes it up.

Q Do you remember when you first heard it?

[623] A Probably—a fellow in the bank who's our economist using various statistical phrases, but I'm not a statistician.

Q Does the concept have any meaning to you in terms of your understanding of your bank's markets—market or markets?

A I have my own method of determining bank's markets, and I use mostly consumer information published by the—at Hartford by our own state government which breaks down the various counties and areas and so forth.

Q What, in your opinion, is the—is the total geographic market of your bank?

A Within the trading area of our facilities. In other words—

Q The area within which you have branches?

A We have—frankly, we have a branch policy that we will not make loans—we only have one loan that I know of in the bank that's outside our trading area, it is a fundamental policy that we take the liabilities from the area and apply them back as assets into the area within which we do business.

Q And, again, this trading area is the area within which you have your branches, is that right?

A That's correct. There may be very few exceptions that we have for one reason or another—maybe one of our customers is 30 miles away from our office and he has two facilities and [624] we do both plants or something like that, but, you know—

Q If you knew that your trading area crossed two or three standard metropolitan statistical areas, would that have any particular significance to you?

A Would you define what you mean by a metropolitan statistical areas, please?

Q Well, it is a concept we have discussed here—is used by the Bureau of Census, and I couldn't define it offhand, I can show you what's in the record, but—Bridgeport is—

A I have to know the definition of it.

Q I understand. There is a Bridgeport SMSA, a Norwalk SMSA and a Stamford SMSA, for example,

do these concepts have any meaning to you in terms of what you consider your banking market to be?

A Oh, sure. I mean business in the western part of Fairfield County is entirely different than business in the eastern part of Fairfield County, you got a different population mix and makeup of industries, and it is the same thing—

Q Do you charge different prices in different parts of your service area?

A No, we're a one-price bank.

Q Do you charge one interest rate for automobiles loans, for example, throughout your service area?

A We have a rate schedule based upon what we call [625] penetration, so if a dealer has good penetration in the retail market, then he might get a different type of an arrangement, but basically, the rates are standard for the same type of dealer, but you get different types of grade of credit, too, so you can get a variance.

Q But these variations in the credit worthiness of borrowers are applied uniformly throughout your trading area?

A That's right.

Q In other words, if a guy is a good credit risk in Stamford, he'd get the same credit rating as if he were in Norwalk?

A Right.

Q For your consumer loan interest rates, are your rates the same throughout your service area, again—again, assuming there might be variations for credit worthiness?

A That's right. And mortgages, too.

Q And the same for mortgages. Do you take into consideration in establishing interest rates on loans both consumer and mortgage competition throughout your service area from banks that are there?

A You mean if someone's charging 7% and we have been charging 7½, we come down to 7%, is that what you are saying?

Q My question is: do you take it into consideration, yes.

A We take our competition's activity and penetration into [626] consideration, but we do not call up this bank or that bank and find out what their rate schedule is for this or that, because I'd be in trouble with another section of Mr. Clark's department.

Q I'm not suggesting that you do that, Mr. Blackford. But the word does filter out through legitimate public sources?

A If you are asking if there's price cutting in the area, we're aware of price cutting, if that's what you mean.

Q Well, my question really is: when you establish your—the prices for your various banking services, do you do so based upon the best information that is legally available to you about what your competitors are doing in the same area?

A No, I do it—a net basis, what's profitable to the bank, on interests being paid on deposits, our rates are somewhat less than our competitors and much less than on mutuals, so I mean that answers your question.

Q You pay less on savings deposits than some of your competitors do?

A That's right, both commercial and mutual.

Q How are you able to do that?

A How we able to do it?

Q Yes.

A I think there's a relationship between short-term rates, such as the 90-day CD or the federal fund raisers or the [627] bill rate, so what you would pay for the same money for the same term—if you start paying half to ¾ of a percent over what you can get in the market, plus your reserve requirements, why, I would consider you losing money, and that's the way we operate.

Q Do you consider that you are in competition with savings banks for savings deposits?

A With one hand tied behind our back, no question about it.

Q You compete at a disadvantage with savings banks?

A Mutuals.

Q In what respect do you consider that you are at a disadvantage?

A There's a different type of breed of cat and different tax structures so—and also the regulations permit them in most instances to charge a quarter percent more—or pay a quarter percent more on their deposits than we can under the regulation.

For example, five and three—we have a limit of five and three-quarters for two years, and they have a limit of 6%, plus daily compounding brings it up to—they advertise to seven, so you got a half a percentile difference in there for the same two years for time money, we can't do it, we're a commercial bank, we have a different liquidity problem than they do.

Q And you consider that this—this is a competitive [628] disadvantage to you in competing with this mutual savings bank?

A No question about it. I mean—

Q Do you, Mr. Blackford—does your bank compete with with mutual savings banks in the making of real estate mortgage loans?

A Yes, we're all after the household mortgage loan, the consumer mortgage loan, as well as commercial mortgage loan.

Q In every area in which you make mortgage loans, are you in competition with mutual savings banks?

A We are competing with them, whether we are ratewise, competition is something else.

Q Basically, you are after the same business, right?

A Yeah, that's right.

Q Do you consider that you compete in that area at any competitive advantage or disadvantage?

A Well, rate is one thing, service is another thing, evaluation of the security is another thing, and two persons may look at a piece of property and one fellow come up with a $30,000.00 mortgage and another fellow come up with a $35,000.00 and the fellow—every borrower's hungry and takes the most—amount of money he can take—secondary, the bank's been operated on the basis that the deposit structure of the territory does not satisfy the loan demand, so we have been what [629]

is known in the trade as a mortgage servicing bank, we originate mortgages and sell them to savings banks as well as life insurance companies and service them so that we can supply our depositors with the long-term mortgage credits that are needed by them in a growing area, and you got to remember from Byram and north and east—in Fairfield County has been a very growing area.

Q But you compete with mutual savings banks for the same kinds of real estate mortgage loans, right?

MR. CLARK: I object, your Honor. He's leading the witness now, and this is his own direct testimony.

THE COURT: Well, it is a Court case, and in Court cases I am fairly lenient of leading questions, but I have observed the witness, he's not going to be one that's led into an answer that he doesn't want to give because of a leading question. The objection is overruled. I think the witness is not being misled by some leading portions of the questions.

So you may proceed as you are, Mr. Reycraft.

Q Mr. Blackford, does your bank compete with New York banks for trust business, in your opinion?

A I think every bank in the area feels they compete with New York banks for trust business. We have a lot of our customers that work in New York, so that subject to the solicitation [630] of New York institutions from their place of business, and we subject them to our solicitation from their place of residence.

Q Is it your observation that this group of customers tends to be a more likely source of trust business than perhaps other groups?

A What do you mean by other groups?

Q Well, I'm suggesting, for example, the people who commute to work, would they be—generally considered to be a more fertile source of trust business?

A I don't—that's difficult to answer, because I think there's a change in the trend, there's more people commuting into the area than commuting out, so—

Q Right.

A —so that I don't think that—it is a matter of services and reputation and capabilities of—of servicing the potential customer.

Q Have you observed an increase in the number of persons commuting in from New York in the past several years?

A You mean—

Q In from New York to Connecticut, that work in Connecticut?

A Yeah.

Q Has this been pretty significant in your view?

A Well, down where I live in Greenwich, appreciably, [631] I think we got more commuters into Greenwich now than we had out—than we have out. Used to be the other way around, maybe ten years ago, and I think Stamford is in approximately the same position.

Q How about Norwalk?

A I don't know anything about Norwalk, we don't have any offices in Norwalk.

Q So do you observe an increasing interaction between southern—southeastern Connecticut and New York?

A Interaction?

Q Interaction in terms of commuting patterns back and forth and in terms of competition between banks?

A No more than there's always existed.

Q Is it your opinion that it has existed for a long period of time?

A The metropolitan banks have road men in every state in the union.

Q And they have them in Connecticut, don't they?

A Sure.

Q Do they call on a lot of businesses in Fairfield County, to your knowledge?

A They never tell me who they call on, unfortunately.

Q Do you learn through your own sources that, in fact, they do?

[632] A I'm not surprised if—sure. They don't—they call. I know they got customers, but I don't know who their commercial customers, but I don't know who they call. I know they got customers, but I don' tknow who they are, because they never divulge them.

Q All right. Have you seen any effects of advertising by New York savings banks in Connecticut?

A I think our own mutuals hold them off pretty well on advertising.

Q Have you seen—excuse me.

A I don't think I've ever seen a New York savings bank advertise in a paper up here. I may be wrong, but I don't think I have.

Q You and I talked, I believe, a few weeks ago, is that right?

A Uh-huh.

Q I believe at the time you mentioned that you thought that the Bowery Savings Bank ad with Joe DeMaggio—

A I see that on TV at home when I'm watching the New York news.

Q Right. Do you think that has any impact on interest rate competition in Connecticut?

A No, I think they're different ways, though, the fellow sitting with all the appliances, I think that has an effect.

[633] Q In other words, they compete?

A It makes you mad because the whole story isn't being told as to—it makes a banker mad, but you got to have convenience, too, you know, with access to making a deposit.

Q But you do regard this as competition?

A Bowery?

Q Yes.

A Not as much as you think I—as far as I'm concerned, a few of these big mutuals around here give us all the competition we need, you know.

Q Which ones do you have in mind.

A People's Mechanics in our own area, and the Norwalk Savings and the Stamford Savings, they give us a lot of competition, and you got a few federals around. I'm not personally aware of people going into Bowery, or I'm ignorant or so forth, I'm aware of their give-away programs, you know, the TV.

Q The give-away programs are a form of competition, would you say that?

A Definitely.

Q Mr. Blackford, has State National Bank opened any de novo branches during your administration?

A During my administration?
Q Yes, sir.
[634] A That's only—well. I been the chief executive officer since maybe 1957, at that time we had eleven offices as a result of consolidations, and then we merged the Black Rock Bank, which gave us three, fourteen, and we now have 42 facilities in business by the first of the year, or first quarter next year, and the differences are de novos.
Q So they're—how many would you say of those are de novo?
A Is that eighteen?
Q If you say so.
A 14 from 42?
Q When you consider opening a de novo branch, do you take into account competition from savings banks in the areas in which you are looking at for a branch?
A Uh-huh.
Q Why?
A Because they are—you gotta—you can't beat 'em on price, you gotta beat 'em on service.
MR. REYCRAFT: That's all I have, Mr. Blackford.
THE COURT: Redirect? I'm sorry.
MR. McENERNEY: I have nothing of Mr. Blackford.
THE COURT: Anything from any other defense counsel?
All right, redirect.

[635] REDIRECT EXAMINATION

BY MR. CLARK:

Q Why haven't you engaged in more mergers, Mr. Blackford?
A We've gone on a—I've always felt a de novo situation taken about five years for a branch to break even with the long run more profitable equitywise to the stockholder than paying a high premium for an acquisition, and I have never—we've never paid a merger consolidation on a high premium basis.
Q That's because you have one stockholder, so to speak?
A No, no, this is—this is before S&H came in the picture.

Q So you have expanded considerably de novo, have you not?

A That's right.

Q You have expanded to Wallingford?

A That's right.

Q That's a substantial—

A Danbury.

Q Danbury?

A Ridgefield.

Q New Milford?

A New Milford, Milford, we have put de novo branches in Greenwich and Stamford, too.

Q Watertown?

[636] A Yes.

Q That's up near Waterbury, isn't it?

A That's right.

Q Is that branch getting any business out of Waterbury?

A Some. You—you know, a person works in one town and lives in another town, why, it's a matter—ultimate convenience, in my opinion, where the fellow does his banking business and the hours the bank's available for him to do his business in.

Q And you have a branch in Naugatuck, which is also next to Waterbury, don't you?

A Yeah, sure, and Ansonia.

Q Does your Naugatuck branch derive any business out of Waterbury?

A I wouldn't say so. There may be some—some people who live or work in the other areas—I can't answer definitely, but we do get some, I assume.

Q So to the extent there is commuting and traffic between those two towns, those towns do draw business, don't they? The answer is: yes?

A Yeah.

Q Does your bank have a guideline in terms of the amount of money that you allocate to de novo branching every year?

A Yes.

[637] Q How much is that?

A Well, it's a loss of earnings. I been operating on the basis of 250, $300,000.00 a year for de novo branch development.

Q Have you found your branching program to be a profitable one for your bank?

A I mean figures speak for themselves.

Q And what do they say?

A Well, we have had a 10% compounded earning record, we have exceeded that in the last ten years, so I think if you do 10% a year, it is not too bad compound.

Q You mentioned consumer information published by certain agencies in Hartford, which you rely on to define your markets?

A I do.

Q Would you elaborate on that, please?

A I forget the department that puts it out up in Hartford, but there's a book that comes out every year, broken down by county, by residence, by population growth, information as to the industrial makeup of a community or a county and the population density and so forth used by the development commission for attracting industries into the town—into the area, and it is used by people in the area as to what makes up the statistics or population of a community [638] that's what I use it for, anyway.

Q And do you use the population projections that the state agencies publish, also?

A No. We—we have our own—you go back in the past record and then—having some judgment on what's going—take place in a given community, why, you may put a branch in a community that day—outside wouldn't think would justify it, but if you have your own method of determining trends and if industry's going into a new area, why, then, two or three years the area grows—take Oxford, for example, which we don't have an office in, you know, but Uniroyal goes up there, I'm sure other banks will look prior to Uniroyal going in there, see if they have—

Q So you look ahead, is that correct? How many years do you look ahead?

A How many years?

Q Yes.

A Well, we try to work on a five-year span, informal, nothing rigid.

Q That's your profitability break even point?

A What we can afford and what we can't afford, that's the book I'm talking about, what Mr. Reycraft has right there.

Q Yes, right. So when you investigated New Milford, for example, you saw sufficient growth there to justify a [639] branch in New Milford?

A For the future.

Q Yes. Has your judgment been borne out as correct?

A Well, it's grown, but not breaking even yet, it's only been up there a couple of years.

Q And when you established a branch in Wallingford, you made the same determination, didn't you?

A Uh-huh.

Q And Ansonia?

A All of them the same way. I mean, in the first place, the controller's office wouldn't let you establish a branch unless you give him a three-year projection and costwise and estimatewise and deposit growthwise, they wouldn't even entertain the application if you didn't give it to 'em.

Q So your projections are always for profits, I take it, within that period of time?

A Just like a—yeah.

Q How many branches have you had denied in the past few years, branch applications?

A Denied?

Q Yes.

A Can't think of any. I mean that wouldn't be a—very complimentary to management if it was denied, in other words, your judgment was bad.

[640] Q You haven't had any denied, though?

A Hum?

Q You mentioned that there is some difference between lower Fairfield County and Bridgeport, for example?

A Uh-huh, in my opinion.

Q What do you mean?

A I just think that the—what I call lower Fairfield as Stamford, Greenwich, New Canaan, Danien area—is

using a slang expression Madison Avenue type of competition, sophistication, life standards and so forth, and from Norwalk and east is more New England, Connecticut, even in the practice of—trust departments are different, one follows the New York rule and the other follows the Connecticut rule, which is trust departments do most of the work and attorneys don't.

[641] Q So, it is—do you think it is possible, then, that many banking customers in Stamford do their banking in Bridgeport?

A Could be. It's all according where they work. They work in Bridgeport, they can do their banking at lunch hour. Fine. If they get home after five o'clock or three o'clock and they can't do any banking, well they're going to do it where they can. We have found that very often we will try to—when some industries are moving into Stamford or Danbury we concentrate in Danbury to maintain the business that we had already in Stamford.

Q I am sorry, I don't—

A Well, if you get a business that moves out of a high-cost labor market to a low-cost labor market, like from Stamford to Danbury, we have had situations where we went into Danbury, created branches and we were able to retain the business that was moving from Stamford to Danbury by the fact that we had facilities up there. If we didn't have the facilities, why—very often branch applications or branch locations will be put in from a defensive point of view as opposed to an offensive point of view to retain business.

Q To retain business? You also consider expansion by other banks into an area as a reason for going into an area?

A Repeat that again?

[642] Q Well, if—if Bank A is going into an area—

A Yeah.

Q —is that—is that sometimes a factor which would lead you to consider the area as a defensive move?

A Unless I had some customers moving in there, do I want to protect? In other words, if you can't service them in their new area, why they're going to go to some other bank where they can be serviced in the area.

Q Anyway, community, place of work, place of residence, is an important factor when it comes to banking, isn't it?

A In my opinion it is, yes.

Q When you consider the rates that you—that you set for your bank, which bank is more important to you, City National Bank or Waterbury Trust—Colonial Trust Company?

A Say that again now?

Q Well, you testified that you set rates for banks—for the services that your bank offers and that you consider—

A From a profit motive point of view?

Q What do you mean by that? What do you—how do you determine that?

A I don't want to put out—pay for—for liabilities on a base I can't make any reasonable profit within a tax—after paying taxes.

Q So—

[643] A For example, on time deposits we are at a disadvantage taxwise, earningswise and everything else to a mutual's—mutual's liquidities position entirely different—they go into much more—longer term investments than a commercial bank that has to go into a liquidity and short-term investments rate structure and different tax liability. Incometaxwise, we earn money for a stockholder.

Q So you have different considerations when you set your rates than the mutuals do, do you not?

A That is right.

Q You have to consider your liquidity; you have to consider the loans you make.

A Every commercial banker will tell you you can call the matter time deposits, but everyone looks at them for all intents and purposes as almost a demand deposit—almost a demand deposit.

Q But considerations you make are based on your own profitability problems, is that right, and the loan portfolio that you have. Do you make a lot of commercial-industrial loans?

A You mean as opposed to commercial-real estate loans?

Q Yes.

A Yeah, sure.

Q What proportion of your loans are C and I loans as we call them?

[644] A I can't give you off hand, but we are a commercial bank—we have a good proportion of our business—is in relationship to our demand deposits and commercial loans. We run about—anywheres 68 to 70 per cent loans. We run our savings deposits—we have a ceiling—self-imposed ceiling—65 per cent of our savings deposits and mortgages never go up to the 70 per cent limitation, and that's about it.

Q How much of your mortgage loans do you sell to savings banks?

A I would say off hand we are servicing a portfolio in the neighborhood of eighty million for others—all others—insurance companies, State of Connecticut, savings banks within the state, without the state.

Q What proportion of that—is it of your total real estate loans?

A Our mortgage loans—I can't remember whether it's a hundred twenty-three million or a hundred and forty-three million.

Q So eighty million of that—

A No, no, in addition to.

Q Oh, you are not competing with savings banks for those loans that you resell to them, are you?

A Sure are. We have to compete with them to originate them, and then to give us additional funds to reloan, we sell [645] them and service them and we get a fee for annual services. It's a very common business in the commercial—all the banks do it.

Q Do savings banks sell loans to commercial banks and service commercial banks?

A They could—I don't know whether they do or not—they're usually buying loans within the state and without the state. I could see why maybe if they had a run off deposits, they would want to sell some loans if they're running up to their statutory business.

Q You don't know if they do that?

A It's mostly the commercial banks, to my knowledge.

Q Why do you have to sell these loans again?

A The loan demand for mortgages is, in my opinion, greater than deposit structure being able to service a community. So that by this operation which we have been doing for years, you bring in long-term money into an area which you can put out in mortgages, but you do it in reverse. You create the mortgage and sell it to an insurance company or a mutual savings bank and retain the service and retain the customer relationship. It's a very common banking practice.

Q Customer relationship is important in your bank?

A Yeah, because then you attract the demand deposit.

Q Any other services—

[646] A Yeah.

Q What might they be? Trust services?

A Trust services, installment loans, commercial loans. You just turn your money around and you are not commiting yourself for a twenty year period or a thirty year period at a fixed rate—you are riding the current rate.

Q It's important to your bank, then, that it sell as many of its services as possible to each of its customers.

A Definitely, yeah. We have over a hundred services.

Q You consider yourself to be a full service commercial bank?

A I would think so.

Q Do you recall your application to establish a de novo branch in Milford, Connecticut?

A Do I recall it?

Q Yes.

A I'd say no. Did I sign it? You got it there?

Q I have a portion of it; I don't have it all. Does the application require that you—that you state at the extent to which there are non-banking institutions in an area?

A Non-banking institutions?

Q Yes. Non—non-commercial banking institutions, savings banks, for example?

A I think so. I tell you—I haven't done this in so [647] many years. I will go out and figure out where we want a branch and one of the boys on the staff does this. I haven't filled out one of those things—I haven't filled one out in ten years, fifteen years, I wouldn't know the details.

Q At least when you put your branch in Milford, the existence of any savings bank in that area didn't deter you from doing so, did it?

A I don't know—whether New Milford got a savings bank.

Q Milford.

A Milford's down here.

Q Yes.

A Down here?

Q Yes.

A You are talking about Milford—I don't think there is a savings bank in Milford, is there? There is.

Q Anyway, you don't—

A I don't—

Q —remember whether there is or not and you don't remember whether that was an important factor in the decision to put the branch in, do you?

MR. CLARK: I ask that this be marked Plaintiff's Exhibit.

THE COURT: Will we finish with Mr. Blackford [648] within a few minutes? If not, I am going to recess for lunch. I would not hold him here if it's just a matter of five or ten minutes.

MR. CLARK: I don't have much more, your Honor.

THE COURT: How about you, Mr. Reycraft?

MR. REYCRAFT: Very brief.

THE COURT: Why don't we try to finish with him?

THE WITNESS: Thank you.

[649] Q This is a portion of your application to put that branch into Milford, Mr. Blackford. I refer you to Page 3—Page 7, Paragraph 12. Would you read that paragraph, please?

A Let me just look at it a second.

Q Sure.

A Yeah. I'm just curious, what's the date of this thing? You know, just from—do you know?

Q Well, that's the date of—that's your application to go into Milford. Now, I can—I can check on that.

A That's all right, it's not signed with a date. I just wondered. Paragraph 12 says: "We anticipate a little competition from mutual savings banks or the savings

banks and loan associations. This is justified, we feel, since we are a full service bank in a 2.2 mile distance to the savings bank and the savings bank and loan association from our proposed location which makes active competition unlikely." That's what it says.

Q Was that your feeling at that time, Mr. Blackford?

A You know, I didn't know when we wrote this. And who wrote it for me, but if I signed it—I don't know. Who signed it, do you know?

Q I believe you did.

A I did? Well, that's what the boys thought then. If—

Q It didn't deter you from putting your branch in Milford, then, did it?

[650] A What?

Q The savings banks in that town?

A No, and I don't know how many savings banks they got in that town, to be perfectly frank with you.

THE COURT: Well obviously it didn't deter him, because he's there.

Q Is your branch profitable in Milford, Mr. Blackford?

A I think it is one of those marginal branches that hasn't really broken even yet. Once you get these branches, you know, until they make a little money, why, then, you—

MR. CLARK: Plaintiff's Exhibit 123—24, I'm sorry.

(Plaintiff's Exhibit 124 was marked.)

A Going back this says the competitive banks located in close proximity, I don't see any savings bank there.

Q 2.2 miles, then, is not very close, is that right? You don't think that 2.2 miles is close enough to make a difference in terms of competition from a saving banks?

A Yeah, but on Page 2 the application lists competitive banks within proximity of the service area as follows, unless my bifocals aren't reading right, and I don't see any saving bank listed there.

MR. REYCRAFT: Look on Page 7, Mr. Blackford.

THE WITNESS: What? Page where?

[651] MR. REYCRAFT: 7.

A Oh, yeah, okay. Yeah, there's Milford Savings Bank and a federal savings and loan of New Haven branch.

Q I won't go over any more applications, Mr. Blackford. You—you stated that it is common that bankers will talk with each other about merger, is that correct?

A Oh, sure. I mean—yeah. Definitely.

Q Has this occurred more recently in the past than it did before?

A You have had a merger situation 15 years in the State and they're talking all the time, they're talking now, they talked last year and the year before, I mean —little banks will come down and visit, you know, want to talk.

Q And would you say that the larger banks in the State are also very mindful of this action and what it could mean?

A Of this action here?

Q Yes.

A Definitely.

Q And they're all watching it very carefully?

A Yeah, sure, I would think so.

Q And it could make a significant difference in their own plans of merger or possible expansion?

A You'd have to be aware of it and—from a competitive point of view, et cetera.

[652] MR. CLARK: I have no further questions.

THE COURT: Mr. Reycraft?

RECROSS EXAMINATION

BY MR. REYCRAFT:

Q Mr. Blackford, the application Mr. Clark referred to, P-123, indicates that the Milford Savings Bank had share accounts as of the date of the application which appears to have been around 12/31/66 of a little over 18 million, and that the First Federal Savings and Loan of New Haven, which has office in Milford, had share accounts of over 155 million.

A Well, that's a branch, though, isn't it?

Q Yes, sir, that's right, that's a branch, there's a branch in Milford of—

A Of this, but you don't know what the deposits in that particular office are.

Q Right, right. And your branch in Milford competes with both of those institutions, does it not?

A I would assume so, but, you know, if we're in one end of town and the branches—and your competitor's on the other end of town, you may have a different area of competition.

Q All right. You haven't—you don't—didn't—don't recall preparing this application, your staff did, as I understood you, right?

A I know the location in Milford very well, because [653] when it is high tide, we almost get washed out.

Q Pardon me?

A At high tide we almost get washed out, we have a very bad situation there.

Q Have you, Mr. Blackford, noticed any change—

THE COURT: You better keep your bank open only at low tide.

THE WITNESS: Yeah, that's right.

Q Have you, Mr. Blackford, noticed any change in the availability of desirable de novo branching sites in Fairfield County over recent years?

A You know, that's an interesting question, because —I used to be with a bank in New York years ago, and I will answer your question this way: as a community has an increased comp'—concentration of people per square mile or per block, or whatever you want to say, then when you put a branch here and another branch five miles apart, and when the population density increases, the practice is to put something in between, because the density of a given area will serve so many offices. Now you can just take a look at New York City and what it was 30 years ago, and then the branches that are down there now 30 years later. Sometimes they got a branch servicing one building because of the density of the people in that particular given area.

[654] Q So have you—

A So my answer to your question: as any community grows or any given county or state grows, why, the people—the population—why, they're going to have more facilities to service them.

Q And there has been a substantial number of—substantial increase in the number of branches in Fairfield County over the past five or ten years?

A State of Connecticut.

Q How about Fairfield County, also?

A Sure, to my knowledge.

MR. REYCRAFT: Okay, that's all I have.

BY THE COURT:

Q Mr. Blackford, I'd like to ask you this. In your own way, would you explain or try to answer this question, not as an economist or not from a feedback you get from lawyers and so forth, but as a banker, and not necessarily as President of the State National Bank; what view do you have with respect to mergers between two large banks when it comes to something I believe you are sensitive to because you mentioned it quite a few times, service to the customer, convenience, to the point that you even think if your bank can service better, is more convenient, and has quality, that you are not even fearful of a lower or higher rate of interest from a mutual savings, so from that [655] point of view, from the customer point of view, how does a banker generally view mergers? Are there disadvantages and advantages?

A Yeah, definitely, in my opinion.

Q And how do you weigh—what are they, first?

A Well, I think, Judge, you must look at the industry as a service industry, period. Then you must look at the type of customers you have. You have the individual who can be broken down into three categories, the working man who lives in week to week salary, the medium type individual, of income, who has some savings, then the very wealthy individual who—you know, in this State, you could have some people who—net worth is more than the capital of a bank, and, therefore, they don't want to put their trust assets in a bank that—they're worth as

much as the bank is, they want to have the security of a larger capital stock, then you take—on the commercial side you have three types of business in the average. You got the small businessman, the proprietor, where I have always felt that that type of a loan to a man on the street was an equity loan, you know, because he didn't have anything, you are providing him with a capital, call it a 90-day bill or something like that.

Then you have your medium type factory, or industry man, or factory, or manufacturer, service corporation, which the average bank in the State could handle their credit and [656] so forth under limitations.

Then you get the very large corporations, where I think you could take examples in the State where, if you put all the lending limits of all the banks together, they couldn't satisfy the legal requirement—or lending needs of a given national or multinational corporation.

So then you come down to a competitive area. Very frankly, I thought that—several years ago that we were pretty much in balance, namely: Fairfield County area, New Haven area and the Hartford area marketwise was pretty much inbalance bankwise, et cetera, et cetera, and competitively we were able to compete effectively, but when you get billion dollar banks involved into your area, the whole thing changes.

They advertise big bank, big this, big that, they could spend money to develop business over a period of time, whereby the expense is not much to them, but it would be considerable to a much smaller bank of one size or another. The corporation that has large lending requirements, preferably, would like to do business with as few banks as possible to meet the requirements, so, therefore, in my opinion, the lending limit is an advantage, the size of the lending limit in attracting the larger type of account which maintains a—normally, the larger balances and generates—

Q How about the average depositor and small businessman? [657] How is he affected?

A Normally, the small fellow, the banks can take care of him without having to lay off part of the loan or anything else. The small fellow—it gets down to the

makeup of your personnel in the branch, are they servicing that small fellow or are they just taking—it is a composition of people, really, what determines it, but as far as capability of servicing, you know, they don't need five million dollars or ten million dollars, they want $25,000.00, and that's not a big loan.

Q When you hear that two big banks are thinking of merging or have merged, do you, as a banker, feel that's good for the banking business, bad for the banking business, or you are indifferent toward it?

A I'm not indifferent. You got 14,000 or 13,000 banks in the country. You got one General Motors and you got one A&P, you got one First National Store, et cetera, et cetera, they can cross states lines and do business. The banks credit, the banks checks cross state lines, but very frankly, our system of banking in this country is antiquated. Why can't we cross state lines? Why can't we do business across state lines? I got a branch down in Byram, and across the river is Westchester County. We got customers that come across the river and they got customers that come across the river in the reverse. I just think we got too damn many banks, they are not big enough [658] to service the large corporations individually. They got to get their term loans and term credits together and so forth. I think eventually that we should be able to cross state lines. I think we should have statewide banking. I don't think there should be any stopping of it.

On the other hand, I don't think you can have two banks for one reason or another, or three banks for one reason or another be unable to merge and someone else can't, someone is getting the franchise that the other can't do to compete. I don't know whether it's a problem of yours or the Justice Department, maybe it's the problem of Congress in legislating.

Q How about in the State of Connecticut, you have your eye on the State—

A Tell you what's going on—

Q How does it look to you?

A Well, what's going on in the State, in my opinion, is—you know what I mean by home town rule?

Q Yes.

A All right. You have two banking systems, the mutual system and the commercial, and the home town rule doesn't apply to the other, it only applies within the commercial or within the mutual.

Now, we have gotten a rash of de novo banks, not branches, banks, new banks. So when a new bank is established [659] in a town—

Q It is closed?

A It is closed.

Q Right.

A I guess everyone's in business to make a dollar. So there's automatically a premium on that facility in a reasonable length of time after the thing—that reasonable time might not have taken place, yet in most instances, although we have had conversions from industrial to a commercial bank and that's all and so on. The mutual savings banks are going out and putting branches, they're going out meeting the customer, now, where that customer is. So you are increasing that branch system.

We have had in this State a commercial bank acquire a mutual savings bank, I don't know whether you are aware of that. You have got the holding company situation whereby you got one holding company that runs a state bank, is acquiring a national bank, changing its name and putting an "A" after it, but it is still a national bank owned and operated—will be owned and operated by a holding company which is a state bank, and, therefore, they get the spread between the Federal Reserve District in New York and the one in Boston.

Q That's here in Connecticut?

A You bet, Norwalk, Norwalk and Hartford.

Q Now, how does a merger—

[660] A Through a holding company.

Q I know that, but how does a merger between two other banks—does that help offset this type of action, or does it—in other words, what I'm trying to find out is: when you hear, as a banker, that two banks are merging, do you say that's a good thing or that's a bad thing? There's just too many mergers, there's not enough—

A You are not talking from the stockholders' point of view.

Q From a banker's point of view.

A From an institutional point of view?

Q Yes.

A Well, you have had—or are having a change in the composition of the corporation business in this State, and, therefore, you have that problem from lending limits, so that the larger the lending limit you have, I think you have a greater capabiilty of acquiring that corporation's business and maintaining it.

Two, size in the computer business, in automating yourself, is a very important factor. Three—

Q In servicing?

A First acquiring them, maintaining them—because they're very expensive.

Q Does it filter down to the customer?

[661] A Oh, yeah.

Q The advantage?

A Definitely.

And thirdly, and not the least, if you have a good size and competitive—I'm not talking about the holding company side now, that's another area—you can then staff your bank with professional people, given professional services and be competitive with New York institutions, Chicago institutions or west coast institutions, who are traveling—in other words, you can get a high caliber and capable person because of these.

Q Fine. Do you see any disadvantage because instead of Bank X competing with Bank Y in whatever way they compete, now that they're joined, the element of competition between these two banks is eliminated, so instead of five banks being in the city, for example, there are only four? Do you see any problems there with respect to competition?

A You are talking commercial banks now?

Q Commercial banks only. Right.

A Well, my answer to your question is this—and I think this is where a lot of people forget—I can establish a branch, let us say, in town Y and put two tellers and a manager and an assistant manager there, four

people, and down the street is another branch, we'll say it is an 18 million dollar bank or something, but that little branch is a 400 million dollar bank, [662] has all the capabilities of it, or it is a billion dollar bank or it's a ten billion dollar bank, whatever it represents. So you just can't—when you establish a facility in a community, then the availability and the capability in that community are affected by the bank that comes in there. If it's a billion dollar bank as opposed to area—that's only had 300 million dollar banks, the competition changes just like that, even though they only got one little branch there, because they can draw on everything and accomplish it.

On an acquisition basis, it's much better than de novo bases, because when you acquire something, you acquire the personnel, the so-called know-how in the community, plus stockholders' interest, who are usually local people who give you that support, when you go into de novo you don't have that support, because you go—because after five years they don't remember whether you are the old bank or the new bank, that's why on the de novo basis, in my opinion, it takes that much longer to earn, but from a stockholder's point, it's a different position.

Q One last question. How do you think the typical small business man, we'll say, the unsecured borrower, is affected by mergers? In other words—if at all—do you have any feeling that when a bank becomes big it becomes impersonal and the average depositor, the average borrower [663] no longer can walk into the local bank and kind of say, "Well, Hi, Bill," and not be all tied up with the big resulting bank's rules? Do you think it affects that personalized service, which I know you are sensitive about, because, as I say, you mentioned it to me?

A I'm going to go around the horn on this one. It doesn't make any difference whether it's a small bank—a branch of a small bank or a large bank, it is the person or persons that's in that bank, that particular branch that gives the character of your institution, and say, "Hello, Joe. Hello, Tom," when they come, or they're

just cold and it doesn't make any difference as to the size of the bank.

Now I'll say another thing to you, too, I bet there are many customers of all the banks that say they do business on that bank of the corner, and half the time don't even know the name of it.

Q So you really don't see any relationship between—

A To the small fellow.

Q —between the unsecured loan business type of—

A Well, the—if—to answer your question another way: if you got a small man who'se developed his moral character relationship with his banker and the bank is a small bank or a large bank, fine and dandy. Mr. Jones knows Mr. Smith, and he is good for a thousand dollars or he's good for five thousand [664] dollars for 90 days, whatever the case may be, but when that individual's sick or retires or dies, it's his successor who has the lending limit and makes the judgment. Now, he may be an entirely different breed of cat, and this happens. A change of personnel will change the activity or development of a given branch, just like a manager of a bank—the larger the bank, the less opportunity there is to change the character of the bank, because it is built up by people, no one individual runs a bank, it's a group of people.

But a small bank, it's usually a one-man shop.

I don't know whether that answers your question.

It is the capability—size capability of servicing customers which makes a competitive or noncompetitive situation. Of the large type.

Q Do you think this merger that I'm concerned with is going to affect your competitive ability in the field? Of the State National Bank which big? You don't have to answer that if you don't want to.

A I'll answer, because I told Mr. Clark this. I think the mistake was made—if there is a mistake—I think you have three banks, two billion dollar banks, got a 700 billion dollar bank that have been merged and so forth, same territory, same competing. So that exists, there's nothing your decision can do about it, because under the statute, as I understand it, [665] once it is set, time goes

by, they can't spin them off or break them up. So if the situation—if no other situation is permitted to grow in size to be competitive with these institutions, then you have got three institutions got an exclusive franchise and the other banks will not be able to do this or do that. They'll be limited in their scope.

Q Your feeling is if Macy's and Gimble's merged, Sear's and somebody else better start merging?

A If it's been permitted. But you can't have class legislation.

Q So your feeling is if maybe some other mergers hadn't occurred—

A It's a different situation—

Q —the status quo—

A The marketing situation—let me put it another way, in this city here, and everyone knows it, a billion dollar bank was going to merge the—one of the banks involved, and were turned down because of anticompetition, or whatever it is. However, just recently they came in and bought a hundred thousand dollar bank and now they're a billion three. What the hell difference does it make? You got a billion three hundred million bank in the territory now which we have to compete with. I don't know whether I'm getting clear to you. You have got the situation in New Haven, Bridgeport, and now down Stamford. [666] And in Norwalk. So everyone is putting their best foot forward to be on as competitive a basis as they can and preserve their business and see if they can't get the other business. But they got different type of competition, in my opinion, the whole competitive situation has changed, what we should have, really, is statewide banking.

Because, in effect, you got—you got three banks that practically cover the State now, and why should the other banks be prohibited from trying to do the same thing and strengthen themselves to preserve their current position by joining hands like the others did?

THE COURT: Well, thank you very much for all your time. I would like to thank the staff for staying beyond the lunch.

THE WITNESS: Am I excused now?
THE COURT: Yes.
THE WITNESS: For good?
THE COURT: You are excused.

(Witness excused.)

THE COURT: We'll now recess until a quarter to 3:00.

(Recess taken for lunch.)

[667] Afternoon Session

(2:55 p.m.)

THE COURT: Are the parties ready to proceed?
MR. CLARK: Yes, your Honor. I move that Plaintiff's Exhibit For Identification 123 be accepted into evidence, which is the application of the State National Bank —a portion of the application—for a branch office in Milford.
MR. REYCRAFT: The portion is the whole thing you handed me?
MR. CLARK: Yes.
MR. REYCRAFT: I have no objection.
THE COURT: Very well. Full Exhibit.

(Plaintiff's Exhibit 123 in evidence.)

MR. CLARK: Plaintiff rests, your Honor.
THE COURT: Mr. Reycraft?
MR. REYCRAFT: Alexander Hawley.
ALEXANDER HAWLEY, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REYCRAFT:

Q Mr. Hawley, what is your present occupation?
A I am President of the Connecticut National Bank.
Q How long have you held that position?
A Since January 1, 1968.
[668] Q What did you do before that?
A I was Executive Vice-president.
Q Of the same bank.

A Yes.

Q And before that, Mr. Hawley?

A Senior Vice-president.

Q How long have you been with the Connecticut National Bank altogether?

A After summer employment, my permanent employment commenced in August of 1940.

Q You have been with the bank ever since that time?

A From July, '41 until September of '42 I was an assistant national bank examiner.

Q Did you work in the Trust Department of the bank?

A Yes, I did.

Q Did you have any responsibilities for loans in connection with any of your duties at any time?

A Yes.

Q What other duties did you have in the bank?

A Well, I was in various departments. Worked as a teller, worked in the Auditing Department, I worked in the Business Development Department and then general administrative work from 1960 on.

Q Mr. Hawley, if the proposed consolidation takes place [669] is the plan that you will be the chief executive officer of the bank?

A Yes.

Q Where will your offices be?

A In Bridgeport.

Q Where will the head offices of the bank be?

A Bridgeport.

Q What will Mr. Chadwick's position be with the bank after the proposed consolidation?

A Mr. Chadwick will be Chairman of the Board of Directors.

Q Where will his offices be?

A New Haven.

Q Will there be a full executive office in New Haven after the proposed consolidation?

A Full executive office?

Q Yes, sir.

A I am not sure that—yes, there will be an executive office.

Q The same personnel who are essentially there now will be there after the proposed consolidation?

A Yes, yes.

Q Could you tell us what your reasons were, your personal reasons were, for thinking that the proposed consolidation was a desirable thing to do from the standpoint of your bank?

[670] A Well, in recent years there have been very obvious dramatic changes in the structure of the banking industry in Connecticut. I saw this vividly commencing in '69—'68, '69 and '70 with the movement into my service area of the Hartford banks.

Q You are referring now to the Hartford National Bank and the Connecticut Bank and Trust Company?

A Yes.

THE COURT: Let him finish his answer. Go ahead. In your own way tell us why you wanted this merger. Was that the only reason, that you just gave?

A Well, the fact that they made these moves both through merger and de novo branching into Fairfield County brought an entirely new and intensive competitive climate to my bank and was a clear indication to me that in order to combat what might be the domination of the banking industry in the State of Connecticut by these two banks, the Connecticut National Bank should seek to become larger to provide better competition.

Q Would you care to add anything to the answer as to why you think the proposed consolidation was a good thing from your point of view?

A The ability to hold present business because of the larger lending limits we will have to really better compete in the marketplace with the Hartford banks.

[671] Q All right. Mr. Hawley, will you tell me what you consider to be the maket area of your bank at the present time, Connecticut National Bank?

A Basically Fairfield County.

Q On what do you base that conclusion?

A Because of the fact that of our 51 offices, 40, I believe, are in Fairfield County.

Q Do you consider your banking markets to be the area in which you have banking offices?

A Yes.

Q Now, do you know how many banks you consider to be in competition with you in that service area?

A In varying degrees all banks that are in our service area are competitors.

Q How does your bank price its services, do you have different prices for services depending upon different towns or cities in which you have branches?

A No, we are a one-price bank. We establish rates which are system-wide.

Q Do they apply equally to all areas in which you do business?

A Yes.

Q Do you vary rates on occasion for credit reasons?

A Yes. I mean, there is a prime credit which is the— [672] a loan made subject to the prime rate, and then there are higher rates depending upon the estimated degree of risk in a loan.

Q Are these standards applied uniformly through your service area?

A Yes, they are.

Q Does your bank—do you consider that your bank is in competition with mutual savings banks throughout your service area?

A Yes, we are.

Q Can you tell me why you have that opinion?

A Well, because we make mortgage loans, we accept interest bearing deposits, as they do, savings banks make installment loans, they make collateral loans, as we do. So both in the loan field and in the deposit field we compete.

THE COURT: I hope you do not mind my interrupting.

MR. REYCRAFT: Not at all, your Honor.

THE COURT: I would like to zero in on different points as we go along.

BY THE COURT:

Q You said, Mr. Hawley, one of the prime reasons you had in the back of your mind for this merger is to compete with the Hartford banks, I suppose you mean primarily in Fairfield [673] County?

A Well, no. The merger would provide this bank, which it does not have now, the opportunity to go statewide.

Q Now, I thought you were—

A Or the resources.

Q So it is not only a defensive move, it is an offensive move? In other words, I gathered from your answer, and perhaps—that is why I interrupted—that you were concerned about the strength of the Hartford banks.

A It's both defensive and offensive.

Q All right. Let us talk about the defensive move. How does the merger help you compete with the Hartford banks in Fairfield County when you have 40 outlets, and I don't know how many they have, but you are certainly much bigger in the Fairfield County area, which is your market?

A I think my job is to—

Q How do you answer that?

A I think my job is to look down the road, take the long view of this, and 15 years from now the Connecticut National Bank could be far less of a factor competitively in Fairfield County than it is today because of the Hartford banks coming in here.

Q That is exactly the point I thought you were trying to make, at least in part. Now, tell me why, though. You are [674] much bigger, much stronger in Fairfield County than they can become, because you have a home office, you have, I assume, stable, strong branches.

A They provide services that we are not providing. Their size permits them to do this.

Q In what areas do you feel—just take Fairfield County, for example—what areas do you feel they, quote, outbid or take you out of the picture, what areas would that be? It wouldn't be with the small depositor, would it?

A Well, they are very much stronger and very much—and almost dominant—in the field of municipal financing. They—we would consider a bond dealer department, which one of those banks has, stock transfer work, far more sophisticated computer services which would really apply to small companies as well as large.

Q Is this a potential loss or have you actually felt the loss in dollars and cents or loss of business at this point, or do you feel—

A Inroads have been made in a short period of time. This commenced in 19—well, the first major entry would have been the Hartford National Bank's acquisition of the Lincoln Bank in Stamford, and I believe that was in 1960—either late '69 or early '70.

Q Now, with respect to the other categories of customers [675] that were mentioned by the experts and Mr. Blackford, and I think he mentioned the small depositor, the medium sized depositor, the small businessman and the others, what inroads have they made there in those areas with respect to your bank in Fairfield County?

A With the—I really couldn't say any measureable inroad at the present time, but the concern of mine is the potential. They are new and they are expanding. It is what we are concerned with down the road.

Q Well, isn't that good, though? I mean, let's just assume that you are a master force in the banking business in Fairfield County—and I guess we would have to concede that you are a force with 40 offices—isn't it good that the Hartford is coming in and taking you on in Fairfield County to enliven competition, to have this procompetitive spirit? Aren't you big enough in Fairfield County to meet that challenge at the present time with your present organization without the merger?

A I think we would—I think we'd lose our position to a degree. What we want to do is to—through this New Haven consolidation—is to give us an opportunity to compete with them in Hartford.

Q How does the merger with the First New Haven help you do that?

[676] A Well—

Q In Fairfield County, and then we will get to the rest of the state.

A It would help us because as a merged bank we would be able to accomplish a kind of expansion which—it's totally unrealistic that we can do separately.

Q You have made studies of this?

A As far as we're concerned, because of our—one of the drawbacks that I have is the fact that the Connecticut National Bank has relatively weak capital structure at the present time.

Q And this merger will strengthen that?

A It will give us better access to the capital markets.

Q Now, on the offensive side of the picture, maybe I can bring it right to a head by asking you if you think you can move into markets where the Hartford banks are situated, pretty well entrenched on your own without this merger, can you compete with them outside of Fairfield County without the merger?

A It would be very hard for us to do that.

Q How will the merger help you do something that you will find very difficult to do without the merger? If the merger goes through, how can you in your resulting bank situation aid competition outside of Fairfield County?

[677] A It would be my guess that if we were to put these two banks together there would be an improvement in our multiple, in the value of our stock in the marketplace which will benefit our—and help our ability to perhaps effectively merge. Our banks are both selling now at a very low multiple vis-a-vis the two banks in Hartford which are ten and eleven. It's conceivable that these banks on a merged basis could have a better multiple, stronger market value, and this in itself is helpful with respect to acquisition.

THE COURT: All right, go ahead, Mr. Reycraft. Sorry for interrupting.

MR. REYCRAFT: I don't mind at all, your Honor.

BY MR. REYCRAFT:

Q Mr. Hawley, you referred earlier to lending limits as an element of competition, what is the lending limit of the Connecticut National Bank at the present time?

A Two and a quarter million.

Q Is that the legal lending limit or is that the lending limit which you impose on yourselves?

A This is my present top limit.

Q This is—

A The Connecticut National Bank.
Q This is administratively determined?
A Yes. This is the largest single loan Connecticut
[678] National is making today to any one borrower.
Q Is it possible legally to make any larger loan than that under national banking loans?
A Yes.
Q But you have determined that it would not be prudent to do so?
A Correct.
Q Now, can you tell me what the lending limit is approximately of the Hartford National Bank?
A I believe they are seven million.
Q And can you tell me approximately what the lending limit is of the Connecticut Bank and Trust Company?
A I'd say about the same.
Q Now, is it your—
THE COURT: Excuse me.
MR. REYCRAFT: Yes.
THE COURT: Is the "prudent" hypothetical, or the legal limit?
Q Can you answer that, Mr. Hawley?
A I believe that would be the legal limit.
Q So we get it on a comparable basis, what is your legal lending limit?
A Our legal limit would be two million eight.
Q And your prudent lending limit is what?
[679] A Two and a quarter.
Q Two million and a quarter? Can you tell me what —approximately what First New Haven's lending limit is at the present time?
A I believe First New Haven's limit now is a million seven.
Q That is its legal lending limit, is that your understanding?
A No, this is their—
Q Prudent?
A Their prudent lending limit.
Q Can you tell me again, so we have this on a comparable basis, what their legal is approximately?
A It would be about two million three.

Q And the consolidation would combine those lending limits, is that correct, sir?

A That's correct.

Q Can you tell me why, if you think so, that lending limits are of any significance in competition among banks?

A They are extremely important because with larger borrowers you become a more important banking factor to them, you are able to offer a larger loan, which is helpful to the larger borrower with respect to the number of people he may have to be doing business with. We have instances where borrowers [680] in Bridgeport have run beyond our ability to provide their borrowing needs and they have had to go elsewhere.

Q Can you tell me the names of some companies who have head offices or substantial operations in Fairfield County who require lending limits beyond which you are now able to provide?

A Oh, there are many.

Q Could you give us some of the names?

A Well, Warneco, Acme United Corporation, Remington Arms, The Southern Connecticut Gas Company.

Q Did you put together a list of those companies?

A Did I?

Q Yes.

A Such companies as Avco, the American Can, American Thread, Bunker Ramo, General Electric, General Telephone and Electronics, Hooker Chemical, Stauffer Chemical, Miles Laboratories, North American Philips, Olin, Radio Corporation, Raybestos-Manhattan, United States Tobacco, Uniroyal, Chesebrough Ponds, Richardson Merrill.

Q Are you attempting to compete for the business of these companies now with other banks?

A We—yes, we are.

Q Who are the banks with whom you are in competition for business with these companies?

A Basically the New York and Boston banks. New York [681] basically.

Q And how about the Hartford banks?

A Hartford banks are—are bankers for a number of these companies.

Q And are lending limits significant in competing for their business?

A Definitely.

Q Mr. Hawley, you testified earlier that you would as a consolidated bank consider entering Hartford, can you tell me why you can't do that as Connecticut National Bank at the present time or why you have decided that you can't do that?

A We don't have the capital strength, the—the only way that we would have of entering that city now would be through a merger with one of the smaller banks in Hartford and it would be totally unrealistic.

Q And why do you say that?

A Because we wouldn't be able to afford it on the basis of any exchange of stock.

Q Now, you referred to the multiple of your stock at the present time, can you explain for the record a little bit more what you mean by "multiple"?

A The multiple is the times the—well, it's your earnings divided into your market value gives you your multiple. If your earnings are $2.00 a share and the stock is selling for [682] 20, your multiple is 10.

Q And approximately what is the multiple of the Connecticut National Bank at the present time?

A I believe it's 7.2. It's in that area.

Q Approximately what is the multiple at the present time of the First New Haven National Bank?

A Seven—seven four.

Q And approximately what is the multiple of the Hartford National Bank at the present time?

A I believe they're about 10.

Q And the Connecticut Bank and Trust Company?

A Eleven. Or they might be reversed. But they're ten and eleven.

[683] Q And is it your opinion, which I believe you said, that the consolidation would be likely to affect the multiple of your stock?

MR. CLARK: Your Honor, I would appreciate if there'd be fewer leading questions.

THE COURT: I think when we get into the opinions with respect to the basic issues of the case, you ought to try to avoid leading him. I don't mind you leading him

up to that point, but the ultimate issues, such as the advantages for the merger, maybe he ought to express it in his own—

MR. REYCRAFT: I'm trying to save a little time, your Honor, it will take a little longer.

THE COURT: I know you are; why don't we try those ground rules?

MR. REYCRAFT: All right.

THE COURT: When you are near the ultimate issue, why don't you let him express it in his own way rather than just say: yes or no?

MR. REYCRAFT: Okay.

Q Do multiples in your bearing have any opinion on your ability to make acquisitions?

A Yes.

Q Why?

[684] A Because the multiple is an indication of the valuation put upon the stock in the marketplace. We think this consolidation will improve our bank's earnings, will improve our market price, and if your market price is improved, you have got to exchange fewer shares to do the deal.

Q And it is your opinion—strike that.

Mr. Hawley, would your bank be willing to—how seriously would you consider entering Hartford if the consolidation were to take place?

A We'd give serious consideration to it.

Q Have you considered entering any other areas of the State which are now areas you could not enter?

A Do you mean on a consolidated basis or—

Q On a consolidated basis.

A If we were consolidated, we'd be very much interested in the New London area.

Q Mr. Hawley, are you aware of any area in which there is direct competition between Connecticut National Bank and First New Haven National Bank?

A Yes. We compete in the Cities of Orange and Milford and two—to a degree in Ansonia and Derby.

Q Have you considered making any commitments to resolve this situation as far as this case is concerned?

A Yes, we have.

[685] Q And what commitments are you prepared to make?

A We are prepared to divest ourselves—these are the two banks, now,—of six offices in this so-called overlap area. We have contracts for three divestitures.

MR. CLARK: Your Honor, pardon me, I want to renew my objection, and I assume that you will overrule, but I did want to make clear it is a continuous one.

THE COURT: Objection is noted, same ruling as my prior ruling, and for the same reason.

MR. CLARK: Yes, sir.

THE COURT: Go ahead, Mr. Hawley, you have contracts for three?

A Yes, we have contracts for three. I can say that I have also in my files indications from other banks who'd be interested in bidding on remaining offices.

THE COURT: Now, the contracts for the three are agreements to sell?

THE WITNESS: Yes.

THE COURT: Contingent on this merger or whether this merger goes through or not?

THE WITNESS: Contingent upon the consolidation.

THE COURT: And are they with other Connecticut banks?

THE WITNESS: Yes, they are your Honor.

[686] THE COURT: Smaller than you?

THE WITNESS: Large bank and small.

THE COURT: Large banks and small.

Go ahead, Mr. Reycraft.

Q These agreements are now applicable to three of your offices, did you say?

A They're applicable to two of mine of one of First New Haven's.

Q Now, with respect to the third office of Connecticut National which you referred to, what are you prepared to do with that office?

A The third office? We're prepared to sell that.

Q Do you have any understanding of what First New Haven is prepared to do?

A Yes.

Q What?

A First New Haven is prepared to divest themselves of an office in Devon, an office in Derby and an office in Milford.

Q And how many new banks would be in the four-town area if each of these proposals were consummated?

A Six banks.

Q You have referred to three with whom you have specific agreements?

A Three, yes.

[687] Q And a possible three additional—

A Yes, sir.

Q —is that right? And you are willing to commit, to do that as chief executive officer of the combined bank if the consolidation becomes effective, is that right?

A I am. And I might add that we would be prepared to do this on a similar to merger basis, so that we would—the deposits and loans would pass by legally, not just the best effort type of divestiture.

Q I think that requires a little bit of an explanation, Mr. Hawley, can you tell me a little more specifically what you—what your understanding of the two different means of accomplishing the divestiture?

A Well, one kind of divestiture, I think the phrase generally used is "best effort", the bank, the selling bank agrees to cooperate with the acquiring bank in the transfer of accounts. In our particular case, we're going to see to it that these accounts pass over to the new bank through due process of law.

Q Is it your understanding that this would happen by means of a bank merger application by the acquiring bank?

A Yes.

Q Within what period of time, Mr. Hawley, would —do you think you could accomplish these divestitures?

[688] A Well, it would seem to me they could be accomplished rather promptly. We have—we have, as I say, three contracts now, and a great deal of interest shown for the remaining three offices, so I would say they could be accomplished—

Q Within a one-year period?

A Oh, yes.

Q Mr. Hawley, have you ever given any consideration to forming a bank holding company and having that bank holding company apply for a charter for a new bank?

A I have thought about it, but it would be totally unrealistic for me to do it.

Q When did this possibility first come to your attention?

A In the—in the writ or the—a document that came from the Department of Justice about this.

Q You are referring to the document which initiated this case?

A Yes.

Q The complaint?

A Yes.

Q What is your understanding of the mechanics from reading the complaint of how this would be accomplished according to the Department's view?

A Well, if it's—if it's legal in the State of Connecticut, I believe we would have to organize a holding [689] company which would then own the Connecticut National Bank, and then have a bank organized in the City of New Haven or City of Hartford and then acquire it in the holding company structure.

Q In your opinion, is this a practical avenue of expansion—

A No, we wouldn't—

Q —into New Haven?

A We wouldn't consider doing it, no.

Q Have you had any study made of what the cost would be of proceeding by this means, assuming that it was legally possible?

A Yes, I have, and I believe the—it would cost us probably two and a half million dollars, in that area, to form a holding company.

Q Now, if you were to proceed by this method, do you think it would be an effective entry to have one office in New Haven?

A No.

Q How many offices do you think you would need?

A Well, I'd like three or four.

Q And is that the assumption on which you are giving the estimate of two and a half million dollars?

A Yes. In other words, you don't only organize the one bank, then there's got to be some branching, so you have a reasonable ability to compete, and branches are costly.

Q Do you have any view as to what location in the New [690] Haven area you would have to be in in order to be an effective entrant?

A Gee. Right downtown.

Q In your opinion, would acquisition of Woodbridge Bank and Trust Company be an effective entry in New Haven?

A No.

Q Why not?

A Well, because it would—I wouldn't consider it a good business risk for our bank. It's—it's remote, it's not really in a position to compete for the kind of business you would have to go after in New Haven in order to make the bank a profitable bank.

Q Is it your—

A And make a reasonable contribution to a bank of our size.

Q Is it your understanding that Connecticut National Bank acquired Woodbridge Bank and Trust Company, that the bank would then be able to branch de novo into New Haven?

A No.

Q Your understanding is you could not?

A We could not branch into New Haven.

Q If Connecticut National Bank were to acquire the bank in North Branford, in your opinion, would that be an effective entry into New Haven?

[691] A No.

Q Why not?

A Same reason. It's a unit bank, quite some distance from downtown New Haven where the business is basically done, and I don't think that—my judgment would not be that we could effectively develop a profitable operation for our bank.

Q Are you familiar with the term "standard metropolitan statistical area"?

A Gee, only recently I have seen it in some documents. I have never used it in terms of my own business.

Q When did the phrase first come to your attention?

A I saw it in—in the complaint.

Q Does it have any meaning to you in terms of banking markets?

A No. We have never discussed it in our management meetings, I have never considered it.

Q In your opinion, would acquisition of a bank in the New Haven standard metropolitan statistical area be an effective entry into the City of New Haven?

A No.

Q Why not?

A Because it's not New Haven, it's some outlying town such as Woodbridge—is Woodbridge in the New Haven SMSA? Perhaps it is, or North Haven, no, this wouldn't have any meaningful [692] entry for us at all.

Q You are familiar from this case, I assume, with the phrase "toehold" or "foothold" acquisition?

A Yes.

Q And what is your understanding of that phrase?

A A toehold acquisition is the acquisition of a small bank in a large city.

Q Are there any such banks available in the New Haven SMSA which would permit effective entry into New Haven, in your opinion?

A None.

Q Mr. Hawley, you referred earlier to the capital of your bank. Are there regulatory guidelines as to what is appropriate capital structure?

A There are two measures that are used. One is the ratio of one's capital to assets, and the other is the multiple of loans to capital.

Q And what are those guidelines?

A Well, the Comptroller of the Currency's office in their examinations—in their—the policies, their guideline is roughly when a bank reaches the point where its loans, its entire loan portfolio is eight times its capital, its capital structure is—is on the weak side.

Q And what is the ratio of the Connecticut National Bank [693] at the moment?

A September 30th, 1972, I believe it was eight decimal one.

Q Would that fact have any bearing upon your ability to raise new capital—

A Yes.

Q —for any purpose? How?

A We—may I have the question again?

Q How did that ratio affect your ability to raise capital?

A What it would mean, that the desirability of an equity financing would be rather difficult.

Q Would it have any bearing on the cost of raising capital?

A Yes, it would. As a matter of fact, it might have a direct bearing if we went to a senior debt issue—a debt issue, it would have a bearing on the rate we would pay.

Q Mr. Hawley, do you have any personal information concerning competition by New York City based banks in Fairfield County?

A Yes. We know that the New York City banks are constantly in the area calling on our customers, soliciting business.

Q Do you know the names of any of those people?

A Yes. The Morgan Bank is Mr. Kahrs.

Q C-a-r-r-s?

[694] A K-a-h-r-s. The Chemical Bank, Mr. Hartmeyer. From the Chase Bank, Mr. Penn. From the First National City Bank, Mr. Thors. From Manufacturers Hanover, Mr. Treadway.

Q Are there any others?

A Those are the ones that I—come to mind immediately.

Q Are you familiar with any personnel from Boston banks who call on customers in Fairfield County?

A Yes.

Q Who are they?

A Mr. Gifford from the First National Bank of Boston.

Q Are there others?

A Not that I know of.

Q Has your bank ever done any analysis of the business done by people in the Fairfield County area with New York banks? Have you ever done a check analysis?

A Yes, we did back in 1968, I believe it was. We studied a number of our deposit accounts and learned that there was a substantial amount of business which was done by New York banks in Fairfield County.

Q And how did you reach that conclusion? What were the facts that came out?

A Well, we—we, as I say, went through their checks, and found out the number of checks which were drawn on New York banks.

[695] Q And can you quantify that in terms of percentages or by any other amount?

A Gee, I don't have that, but I know that it can be made available.

Q All right. Mr. Hawley, what is the prime—is there any single prime factor in determining interest rates on commercial and industrial loans?

A Yes. The guideline, of course, is the prime rate.

Q And what is the prime rate?

A Five and three-quarters.

Q Excuse me.

A I beg your pardon. The prime rate is the—is the best rate available to the most creditworthy borrowing for short-term financing.

Q And how does that rate become established?

A It's established in the New York market.

Q In what way?

A Basically in the New York market.

Q In what way?

A By—by the New York banks.

Q All right. On occasion do banks in any other part of the country take the lead?

A It's happened. It's happened, frequently, I think in California, and perhaps in Chicago.

[696] Q And if you see a change in the prime rate in New York, what do you do?

A We, of course, watch it carefully and within a

period of days, if it becomes a general trend, why, it becomes our rate. It has to become our rate, we're tied to this prime rate because of the types of large loans we make.

Q Are your customers generally aware of what the prime rates is?

A Oh, yes.

Q How does that information come to them?

A Well, they see it in the papers, they hear it on the radio; read about it in the financial journals or hear about it when they talk to their banker.

Q Do you establish rates with—which have any differentiation from the prime rate, do you charge all your customers the prime rate?

A It depends upon the degree of risk of the loan.

Q How do you make those evaluations?

A Based upon the financial—number one, the type of accommodation we're asked for, the type of loan we're asked to make and the—our analysis of the creditworthiness of the company.

Q But is it all based on the prime rate?

A It starts from the prime.

[697] Q Mr. Hawley—

A It is based upon the prime rate. In other words, the term loan that we make, in the agreement the loan is directly related to the prime rate.

Q Mr. Hawley, does Connecticut National Bank compete with any kind of financial institutions other than commercial banks?

A Yes, we compete with savings banks, we compete with savings and loans, we have competition from the finance companies, competition from credit unions.

Q What percentage of your business do you compete with mutual savings banks?

A Well, let's see. I'd say 75 to 80% of our loan portfolio are in the same category of—mutual savings banks make with respect to mortgages and personal credit. Installment credit.

Q Do you take into consideration the rates which mutual savings banks charge?

A Oh, yes.

Q In determining your own rates?

A Oh, yes.

Q Do you compete with any other financial institutions for deposits? Any other category of financial institutions other than commercial banks?

A Well, we try and compete with savings banks, they, of [698] course, have better rate structure than we do, but we do attempt to secure savings deposits.

Q What percentage of your bank's deposits are savings deposits?

A Well, it's—savings and time deposits, around 50-50.

Q Can you tell me what, in your opinion, is the geographic extent within which your various kinds of customers have choices starting with the commercial and industrial borrower?

A The geographic extent?

Q Yes, sir.

A They have the—the number of banks that are doing business, commercial banks that are doing business, in the same market area that we are.

Q And is there any change in the number of choices depending upon the size of the borrower?

A Well, the size of the borrower, of course, is a limiting factor in the number of sources he has to secure the credit.

Q Mr. Hawley, you testified earlier about your municipal loan business. Can you tell us in a little more detail what municipal finance business is about?

A Yes. Our cities and towns have need for awfully important services with respect to the marketing of their [699] short-term instruments, acting as certifying and paying agent under bond issues, bidding for certificates of deposit and a general line of municipal financial counseling.

It is a very important business to the commercial banks.

Q Is your bank able now to compete successfully in that business?

A We're in it, but it is dominated by the two Hartford banks.

Q And why are you unable to compete with them any better than you feel you do?

A Well, we can't invest the money in a modest staff of bankers trained in municipal finance.

Q In your opinion, would the proposed consolidation make any change in that ability?

A Oh, yes, we would place a great deal more emphasis on it.

Q What do you do specifically?

A Well, we would, number one, improve our staff professionally and spend a great deal more time with the fiscal officers and the financial officers of the cities and towns of Connecticut. We would work with them on rates, on money markets, perhaps publish bulletins, do a great deal that we do not do now.

Q Okay. Mr. Hawley, you have participated, have you not, [700] in the branching program of Connecticut National Bank over the past ten or fifteen years?

A Yes, I have.

Q Are you familiar in a general way with the availability of locations for new branches in Fairfield County?

A Presently?

Q Yes, sir.

A Yes.

Q Have you observed any change in the availability over the past several years?

A Oh, yes, there's—the opportunities for de novo branching in Fairfield County are—well, almost nonexistent now.

Q Why is that, in your opinion?

A Because of the tremendous branching which has taken place in recent years, plus new charters. I said in my annual report, in my comments to the stockholders at our annual meeting in March of 1972, that in the years 1970 and '71 in Fairfield County alone there were four new banks chartered and 27 new branches—31 new banking offices, in our service area in Fairfield County alone.

Q Can you tell me how the number of offices which—banking offices which exist in Fairfield County compared to what they were ten years ago?

A Oh, there must be—going back to 1962, there could [701] twice as many.

Q Mr. Hawley, how many branches has your bank opened on the average per year in the last ten years?

A Our big expansion branchingwise was in—from '55 to '63 and '65. In recent years we have opened very few.

Q Why is that?

A Because we have not found the areas where we thought in our judgment we could establish a branch that would make, after a reasonable period of time, a contribution to the earnings of the bank.

THE COURT: On that point some thoughts came to mind when Mr. Blackford was testifying that I didn't think about until during the lunch hour, so maybe I'll ask you.

[702] BY THE COURT:

Q He implied when a de novo branch opened that, at least in most cases, they didn't look for a profitable operation in that location for—I think he even mentioned five years—is that kind of what bankers look forward to with a de novo—

A I was interested in his remark as—I target three.

Q Now what do we mean by a profitable location, whether three or five? Do you mean you actually lose money in the first three years?

A Oh, yes.

Q Give me an example how a bank loses money in a location?

A Well, you start off—there are a number of factors you crank into the decision to open an office, and one of the things that you study is the existing business you have in the area, and in most cases, unless it is a defensive move, such as Mr. Blackford made reference to, you have negligible business. So, let's say you start from almost nothing. So you either buy and build a branch with the investment which obviously takes place there or you arrange a rent and you have to staff it, equip it and developing the business takes some time.

Q All those things are cranked into that?

A Everything is cranked in.

Q All right. So, therefore, let's take town X. Town X has—is a hypothetical—no bank at all and you want to

put [703] a branch in there and you are able to under the law. So you put your de novo branch there and if all goes well you lose money for a couple of years and maybe by the third to the fifth year it starts to turn into a profitable location if your studies on population, and so forth, were correct. Is that so?

A Yes.

Q All right. Now let's take the same town X and it has a bank there, alone. You can look at its books and you can determine that it's a nice little profitable bank, isn't that correct? So when you buy it you have a profit from the first year, would you not? I mean you are not expecting that business is going to be down.

A You mean if you acquire a bank, sir?

Q That is right.

A Yes.

Q So at least from that point of view it's a little better to acquire a going bank than to open up de novo branching.

A Well, this is expensive, too, because in most cases there is a premium paid which, of course, reflects itself in the dilution of the entire bank's earnings.

Q Well, now in this expansion period that you were a part of, I believe you said '55 to '62, was most of that expansion by merger or de novo branching, or both?

[704] A It was largely de novo. I think, your Honor, of the fifty-one offices that we have now, eleven result from merger.

THE COURT: All right. Go ahead, Mr. Reycraft.

BY MR. REYCRAFT:

Q Mr. Hawley, can you tell me approximately how much it cost to establish a de novo branch in, say, 1962?

A A piece of property that we own?

Q Yes, sir.

A 1962? I would say hundred and fifty to two hundred—hundred seventy five thousand dollars.

Q What would be a representative cost of establishing a de novo branch of the same comparable size at the present time?

A Three hundred thousand.

Q Does Connecticut National Bank have any branches in northern Connecticut?

A Northern Connecticut?

Q Yes, sir.

A No.

Q Why not?

A Because it— too far away from our base of operations. We couldn't effectively promote the Connecticut National Bank seventy-five miles away with a little de novo branch.

Q There are open towns in northern Connecticut, are [705] there not?

A Yes.

Q How long, at least since you have been with the bank, has it been legally possible, according to your understanding, to open de novo branches in northern Connecticut?

A Forever, if they're open towns.

Q And you have not done that?

A We haven't done it.

Q And to your knowledge has First New Haven done it during that time?

A No.

Q Do you have an opinion as to the approximate population per office which is required to support a de novo branch?

A Yes. I think—this, of course, is a—again cranked into the—what we find in an area with respect to the type of business being done there; I would say thirty five hundred.

Q What factors do you take into consideration when you look at a location for a de novo branch?

A For a de novo branch?

Q Yes, sir.

A Number one, of course, I would look at the banking services provided in that immediate area, or the surrounding areas. We would consider the—of course, the population, [706] housing, building, any business that might be there, the type of business mix, our now projections as to whether or not it would be a growth area. [707] Q Do you consider the presence of other commercial banks in the area?

A Oh, yes.

Q Do you consider the presence of other financial institutions?

A We consider savings banks.

Q Have you ever made a decision as to whether or not to open a de novo branch based upon the presence in the area of a savings bank?

A Yes, I have.

Q When?

A Very recently we were giving consideration to a branch in Oakville, which is not the name of a town, but it is a part of the City of Waterbury. There had been an office of a savings bank in the area, in Oakville, they applied and got permission to relocate that office in some other area outside of Oakville, and it looked to us as though it would be a reasonable place to establish a branch office of Connecticut National.

Subsequently, it developed the bank came back into Oakville, and that foreclosed us, I wouldn't go in there with a savings bank there.

Q Savings bank change its mind about relocating?

A They either—I think they reapplied. I don't—I [708] think this is an additional office for them. But they're coming back into Oakville, and such being the case, why, it would not be a good business risk for us.

Q Was there any reason other than that the savings bank office was there that you didn't open that branch?

A Could I have the question again?

Q Yes, sir. Was there any reason other than the presence of the savings bank office which affected your decision not to open a branch in Oakville?

A The fact that a savings bank was there influenced my decision not to open. Had the savings bank not been there, we would have gone ahead with our application.

Q Mr. Hawley, in your opinion, would it be economically prudent for the First New Haven Bank to embark on a de novo branching program in Fairfield County in the open towns?

A No.

Q Why not?

A I don't think that it would be wise at all. I don't think that they would be able to develop the business to support the overhead, support the bank.

Q Well, there are open towns in Fairfield County, are there not?

A Yes, there are.

Q And why wouldn't they be able to come in and open a [709] branch in some of those towns and compete successfully?

A Because they're pretty heavily banked right now.

Q And why don't you go into de novo branching east of New Haven?

A We don't think that it would provide a reasonable opportunity for profit to the bank.

Q Have you ever considered doing that? Going east of New Haven, that is?

A No.

Q Has anybody in your bank ever recommended it to you?

A I have never heard it mentioned to me.

MR. REYCRAFT: I have no other questions of Mr. Hawley.

THE COURT: I'll give you your choice, Mr. Clark. You can start, we can continue, if you think you can dispose of the witness by 4:15 or so.

MR. CLARK: I don't think I can.

THE COURT: I didn't mean it that way. If you can complete your cross examination.

(Laughter.)

THE COURT: By 4:15, or you can start tomorrow morning. It's up to you.

MR. CLARK: I'm sure that I wouldn't be finished by 4:15.

[710] THE COURT: All right. Then, we'll—we might as well adjourn, start fresh in the morning.

As you know, tomorrow afternoon I have naturalization here, so there will be no court for this case, but we'll have court for the immigration department.

So we will now recess until 10:30 tomorrow morning.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

versus

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 20th, 1972

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[713]
Appearances:

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By: CHARLES H. McENERNEY, JR., Trial Attorney
FORD BARRETT, Trial Attorney

[714] THE COURT: Are the parties ready to proceed?

MR. REYCRAFT: Yes, your Honor.

Mr. Clark and Mr. McEnerney have agreed that we might put on another witness out of order, if it is agreeable to your Honor. He's from out of town and we might be able to get through with him today.

THE COURT: Yes.

MR. REYCRAFT: Doctor John Myles.

THE COURT: Do I have, or will I have before this case is over, the statistics with respect to the amount of business the Hartford banks are doing in Fairfield County and New Haven, and I think as a witness, Mr. Hawley, said yesterday, they do business throughout the State?

MR. REYCRAFT: Yes, sir.

THE COURT: Or something like that.

MR. REYCRAFT: The Special Master's report does contain the information with respect to the business that they do through offices located in New Haven and Fairfield Counties. They—the Special Master's report doesn't show, for example, a loan which might be carried in the Hartford office of Hartford National, but to a company in Fairfield County, but it does contain the information from the offices in Fairfield County and New Haven County.

[715] THE COURT: I suppose statistics are available as to their total deposits, loan business, mortgage business, et cetera?

MR. REYCRAFT: For the total banks?

THE COURT: Yes.

MR. REYCRAFT: Yes, sir, I'm sure they are. I'm sure they're in one or more exhibits, and if they're, we'll be sure they are included.

[716] JACK C. MYLES, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: What is your name, sir?

THE WITNESS: Jack C. Myles.

THE CLERK: And where do you live?

THE WITNESS: In Conventry, Connecticut.

DIRECT EXAMINATION

BY MR. REYCRAFT:

Q Doctor Myles, what is your present employment?

A I'm Executive Vice-president of the Saving Banks Association of Connecticut.

Q And how long have you held that position?

A Held that position four years.

Q And what did you do before that?

A I was Dean of the School of Business and Public Administration at the University of Hartford.

Q And how long did you hold that—

THE COURT: Excuse me, Mr. Reycraft. What is your present occupation?

THE WITNESS: Executive Vice-president of the Savings Banks Association of Connecticut.

THE COURT: What is that?

THE WITNESS: This is a trade association which [717] represent the 68 savings banks in the State.

THE COURT: Thank you.

Q And prior to that you were Dean of the School—

A School of Business and Public Administration at the University of Hartford.

Q And how long had you held that position?

A I held that position eight years.

Q And before that, Doctor Myles, what did you do?
A I was on the faculty of Syracuse University.
Q And did you have any employment prior to that?
A Yes. I was on the faculty of the College of Wooster, Wooster, Ohio.
Q And prior to that?
A Prior to that I was on the faculty of Wesleyan University.
Q In Middletown, Connecticut?
A Middletown, Connecticut.
Q And prior to that?
A Prior to that I was in graudate school.
Q Whereabouts?
A Princeton University.
Q And what was your special field at Princeton?
A Economics, principally in the field of money and banking and financial economics.
[718] Q And did you receive a degree from Princeton University?
A Yes, I received a PhD degree from Princeton.
Q In economics?
A In economics.
Q What subjects did you teach during your career?
A Money, banking economics, statistics, principally.
Q While you were Dean of the School of Public Administration in Hartford, did you teach, also?
A I also did some teaching, yes, in the graduate program.
Q In the same fields?
A Well, primarily in corporate finance and in managerial economics.
Q And what have your duties been as Executive Vicepresident of the Association of Savings Banks of Connecticut?
A Well, we're the trade association, and we, of course, provide a number of services to the savings banks ranging all the way from educational programs to statewide advertising programs, but my principal duties are in connection with the legislative efforts of the association.
Q Do you have an opportunity in connection with your duties to become familiar with the general kind of

business which is conducted by savings banks in Connecticut?

A Yes, I do.

Q And you attend meetings from time to time with those [719] members of the Association?

A Yes.

Q And do they convey to you their needs and desires in terms of legislation and other areas?

A Yes. We have a formal committee structure which generates legislative suggestions.

Q In general—strike that.

Doctor Myles, did you have prepared an exhibit showing the number of savings accounts held by Connecticut savings banks and commercial banks?

A Yes, I did.

Q I show you—

MR. REYCRAFT: —will you mark for identification as D-61 a one-page document headed: Number of Savings Accounts, Connecticut Savings Bank and Commercial Banks?

(Defendants' Exhibit 61 was marked for Identification.)

Q Doctor Myles, I show you Defendants' Exhibit for Identification No. 61, and I ask you whether that was prepared under your direction and supervision?

A Yes, it was.

Q And what does it show with respect to the number of savings accounts held by savings banks and commercial banks and [720] trends?

A Well, this shows the number of accounts that the commercial banks and the savings banks held in June of 1966. This information is based on a survey conducted by the Federal Deposit Insurance Corporation and similar information for 1970. It shows that during this period the commercial banks increased in accounts was some 299,000 accounts. The increase in the savings banks during this same period was some 210 accounts; on the basis of a percentage increase represented for the commercial banks a 31.4% increase in the number of ac-

counts, and for the savings banks, 11.2% increase in the number of accounts.

Q You said 210 for the savings banks. I think you meant 210 some thousand?

A 210,000, yes, sir.

MR. REYCRAFT: Will you mark for identification as Defendants' Exhibit No. 62 a one-page document headed: Dollar Savings Held by Connecticut Institutions?

(Defendants' Exhibit 62 was marked for Identification.)

Q Doctor Myles, I show you Defendants' Exhibit No. 62 for Identification, and ask you whether that exhibit was prepared under your direction and supervision?

[721] A Yes, it was.

Q And what does it show to you as an economist observing the relation—

A This shows the total dollar amount of savings held by all Connecticut institutions, this includes the mutual savings banks, commercial banks, the savings and loan associations and the credit unions.

Then I have isolated those held by the mutual savings banks and those held by the commercial banks. This shows the dollar amount of savings in each of these types of institutions.

On the second page of that exhibit it shows the percentage share of the total savings market held by each of these types of institutions.

Q Excuse me. Excuse me. I didn't mark the second page, I only marked one page.

A They're stapled together, I assume that they—they aren't in your case, I'm sorry.

Q Just referring only to D-62—

A All right.

Q—the one-page exhibit, will you limit your comments to that exhibit?

A Yes. This shows that savings held by these institutions in 1960 were some 3.8 billion dollars, in 1971 there were some 10.2 billion dollars. Mutual savings banks in 1960 [722] held some 2.5 billion dollars in deposits, in 1971, 6.1 billion dollars. Commercial banks in

1960 held 596 million, in 1971 they held 2 billion 200 million.

MR. REYCRAFT: And would you mark for identification as Defendants' Exhibit No. 63 a one-page document headed: Percentage Share of Total Savings Held by Connecticut Institutions?

(Defendants' Exhibit 63 was marked for Identification.)

Q Doctor Myles, I show you Defendants' Exhibit No. 63, and I ask you what it shows with respect to the trend of the percentage of the share of total savings held by the two categories of financial institutions in Connecticut which are indicated on the exhibit?

A This is a percentage share of market computed from the figures contained in the earlier exhibit, and it shows that the mutual savings banks' share of the market went from 65% in 1960 to 59% in 1971, whereas the commercial banks' share of the savings market went from 15% in 1960 to approximately 22% in 1971.

In some of the intervening years the share of the commercial banks—share of the market was somewhat larger. For example, in 1968 they held 23%, they had an increase from 15% to 23% in 1968.

[723] MR. REYCRAFT: Will you mark for identification as Defendants' Exhibit No. D-64 a one-page document with the heading at the top: No. 3, and in the middle of the page: Table One Deposits in Connecticut Insured Commercial Banks, 1960-1969.

(Defendants' Exhibit 64 was marked for Identification.)

Q Doctor Myles, I show you D-64 for Identification and ask you whether you recognize that document?

A Yes.

Q And what does that page come out of?

A This comes out of a re—report which was prepared for the commission to study demand deposits at savings banks. This was a legislative committee appointed in the 1969 session for a one-year study of this problem.

Q And was this information prepared under your direction and supervision?

A Yes, it was.

MR. REYCRAFT: Will you mark for identification as Defendants' Exhibit No. 64—

THE CLERK: 65.

MR. REYCRAFT: 65—sorry—65, a one-page document headed: Appendix I, Share of the Personal Savings Market in Connecticut?

[724] (Defendants' Exhibit 65 was marked for Identification.)

Q Doctor Myles, I show you Defendants' Exhibit No. 65 for Identification, and I ask you whether you are familiar with that document?

A Yes, I am.

Q And to what is that document an appendix?

A It is an appendix to the report that the previous exhibit 64 came from.

Q And was the information contained in that exhibit prepared under your direction and supervision?

A Yes, it was.

MR. REYCRAFT: Will you mark for identification as Defendants' Exhibit No. 66 a one-page document headed: Chart 1, Percentage Share of Connecticut Consumer Savings Market?

(Defendants' Exhibit 66 was marked for Identification.)

THE COURT: What is your definition of a thrift institution as you use in this appendix?

THE WITNESS: Well, thrift institutions are predominantly the mutual type institutions, the savings and loans and the credit unions and the savings banks.

Q Doctor Myles, I show you Defendants' Exhibit No. 66 for [725] Identification and I ask you whether you recognize that document?

A Yes, I do.

Q And was that document prepared under your direction and supervision?

A Yes, it was.

Q And it is a chart to some other document, can you tell me what that document was?

A It is a chart that contains the information which is in Exhibit D-65.

Q Doctor Myles, what do Defendants' Exhibit 61 through 66, which are in your possession, indicate to you with respect to competition between commercial banks and savings banks in the State of Connecticut?

A If I may just fill in a little background here, the commercial banking industry in the State and the savings bank industry in the State are approximately the same asset size and have been for a period of years. Prior to the late 1950's, for a period of some 20 years, the commercial banks were not interested to a huge extent in the consumer savings market.

In the period since the late 1950's, the commercial banks have entered the so-called retail banking field to a much greater extent than had been true in the past, and these figures illustrate the degree of penetration that the commercial [726] banks have been able to make in the consumer savings market in the intervening period since 1960.

Q Doctor Myles, are you familiar with the document entitled: National Fact Book of Mutual Savings Banking, 1972, it is marked for the record, as D-52?

A Yes, I am.

Q Are you familiar with the data contained in Chapter 5—do you have a copy of that book with you?

A I do have a copy, yes. Yes, I am familiar with it.

Q You are familiar with the data contained in Chapter 5?

A Yes.

Q And how about Chapter 6?

A Yes.

Q Was this data obtained from governmental sources?

A It is obtained primarily from governmental sources and also some survey material which the national association compiled.

Q And you are familiar with the general reliability and trustworthiness of this information?

A Yes, I am.

Q That data in Defendants' Exhibit No. 52 shows information for savings banks and commercial banks beyond the State of Connecticut, does it not?

A Yes, it does.

[727] Q Does it indicate any different extent of competition among the two types of financial institutions in other states?

A No, the trend is the same in all the other states.

Q In how many states are there mutual savings banks?

A There are currently mutual savings banks in 17 states.

Q Are mutual savings banks located at all in Colorado?

A No, they are not.

Q Are they located in Idaho?

A No, they are not.

Q How about Mississippi?

A No.

Q They are located in Maryland, however, are they not?

A Yes, Maryland.

Q And, in general, throughout the New England States?

A Primarily in the northeastern United States.

Q Including the State of New York?

A Yes.

Q Doctor Myles, you testified earlier that your duties included legislative proposals on behalf of mutual savings banks in the State of Connecticut. What legislative activity have you been involved in in the past several years since you have been Executive Vice-president of the Association?

A The major piece of legislation that we have been involved with is the attempt to acquire the right to have personal [728] checking accounts in savings banks.

Q And when did those efforts begin?

A They began primarily in 1967, but there is a longer origin than this, but legislation was first introduced in 1967.

Q And what has happened with respect to those efforts?

A Well, they're continuing, they have not been successful. We came fairly close in the 1971 session, but the efforts are continuing.

Q When you say "fairly close", can you be a little more special than that?

A Yes. Personal checking account bill was reported out of committee, the banks' committee, in 1971, it came up for vote in the Senate, was defeated by a very narrow margin.

[729] Q In your opinion will the Connecticut Association continue to seek those powers?

A Yes. It is our position and policy to continue to seek broadened powers in the consumer banking field.

Q Can you tell me in general what you consider to be the area of expertise or best service of mutual savings banks?

A Well, I think historically and by intent the savings banks have served families and individuals primarily, and that's the range of services they would like to continue to provide.

Q And not generally commercial and industrial customers?

A No, we have generally not served them.

Q Do you have an opinion as to the extent to which commercial banks have been either increasing or decreasing their competition with your banks, your savings banks, in that area that you have described as your area of specialization?

A Well, I think these present Exhibits indicate the degree of completion that has developed in the consumer banking area, particularly for individual savings accounts.

Q Dr. Myles, are you familiar with the capacity of savings banks in the state of Connecticut to make personal loans?

A Yes, I am.

Q Do they have that capacity?

A Yes, they have that power.

Q And will you describe any limitations which may exist [730] on that power?

A Our consumer lending powers are limited to a maximum of five thousand dollar loans. These must be term loans, payable in monthly installments and the banks are limited to eight per cent of assets that may be used in this form. The eight per cent of assets includes not only consumer loans but installment loans and un—unguaran—non-guaranteed student loans.

Q What are the total assets of mutual savings banks in the state of Connecticut?

A Approximately 7.2 billion dollars.

Q And if I understand you correctly, it's eight per cent of that legally available for personal loans?

A Yes.

Q How do the rates charged by mutual savings banks for personal loans generally compare to those charged by commercial banks?

A I think generally they're somewhat lower.

Q Are there any other differences in the personal loans offered by mutual savings banks as compared to those offered by commercial banks?

A Well, we—savings banks don't generally purchase consumer paper from retailers or automobile dealers, and so forth. These are generally direct loans made between the consumer and the individual bank.

[731] Q And that distinguishes them from commercial banks which do lend directly to the automobile dealer, for example?

A And do purchase paper that has been originated by the dealers.

Q Are you familiar with what has been referred to here as the "Now account"?

A Yes, I am.

Q And what is a "Now account"?

A A "Now account" is a negotiable order of withdrawal. The Massachusetts Supreme Court held that depositors in Massachusetts have the right to withdraw from their savings account in any form, and these are sight drafts payable through a commercial bank which the individual may use in the same way that he can use

a check. They are drawn, however, against an interest-paying savings account. At least one bank in New Hampshire has now also started this type of service.

Q In your opinion does this give Massachusetts savings banks the functional equivalent of checking account powers?

A It gives them, at least in the mind of the public, what amounts to a checking account, yes.

Q Dr. Myles, are you familiar with efforts of savings banks to obtain other kinds of powers which are now exercised by commercial banks and not by savings banks generally?

A Yes.

[732] Q Which ones?

A Well, we have—aside from, of course—attempted to improve our consumer lending powers. We have sought the right, for example, to hold self-employed pension funds which we currently are not allowed to hold, and then, of course, the right to offer checking accounts.

Q How about credit cards?

A We have not submitted such legislation, but certainly some time in the future the anticipation would be that we would like to be able to offer a full range of consumer borrowing powers and consumer banking services.

Q At the present time, Dr. Myles, for the range of financial requirements which a small borrower or depositor has, to what extent are mutual savings banks in the state of Connecticut able to meet those needs?

A Well, I think the major competition is the availability of checking accounts. Otherwise, we think that we have, at least in some form, all of the other services which individuals or families would require.

Q Are you familiar with any situation in which a commercial bank has initiated litigation with respect to any savings bank branch attempt?

A Yes, it's my understanding there is currently a case involving the Simsbury Bank & Trust Company where a savings [733] bank has had an application approved to establish a branch in Simsbury and the bank is—Simsbury Bank & Trust Company, is opposing the

right of the Bank Commissioner, the FDIC, to approve this branch.

Q And what is your understanding of the reasons for that opposition?

A Well, there are—in Connecticut, of course, there's home office protection for—

MR. CLARK: Your Honor, I object to this testimony relating to some case with which he is not personally involved. I think it's too far removed. It's hearsay, at best.

THE COURT: I suppose the point that is being attempted to be made is that the banks are in competition, not only in theory, but they're actually litigating—

MR. REYCRAFT: Exactly.

THE COURT: —against each other.

MR. REYCRAFT: Exactly.

THE COURT: Now, it's true it's coming in through a hearsay source—

MR. REYCRAFT: He's an expert.

THE COURT: —but I will accept it, because apparently he has been—he is Executive Vice [734] President of the Savings Bank Association. This probably is within his knowledge. On the other hand if the Government has contrary information, it will all go to weight. But I am going to accept the testimony if that's the purpose.

MR. REYCRAFT: Yes, sir.

Q Dr. Myles, would you describe—in the course of your duties as Executive Vice President of the Connecticut Association of Savings Banks, it is one of your duties to keep abreast of developments such as litigation between commercial banks and savings banks, isn't it?

A Yes.

[735] Q And have you, in fact, kept abreast of the Simsbury litigation on behalf of the members of your association?

A Yes.

Q And what has come to your attention in your efforts to keep up with that litigation?

A Well, the situation there is that there are two sav-

ings bank branches in Simsbury and a branch has been approved there for a third savings bank, and the Simsbury Bank and Trust Company is bringing action against the banking commissioner and the FDIC in opposition to establishing this branch in Simsbury.

THE COURT: Is the later bank a commercial bank?

THE WITNESS: The Simsbury Bank and Trust Company is, yes.

Q All right, Doctor Myles, are you familiar with any occasion on which a savings bank in the State of Connecticut has converted to a commercial bank?

A I am not aware of where they have converted to a commercial bank. There have been several cases where they have merged into a commercial bank.

Q Will you describe the most recent case of that type with which you are familiar?

A The most recent case was the Falls Village Bank where the Iron National Bank acquired the assets and liabilities of the Falls Village Savings Bank.

[736] Q And it now conducts the business which was formerly conducted by that savings bank, is that correct?

A Yes.

Q Have there been historically in Connecticut, to your knowledge, any other such acquisitions or conversions?

A Yes, there were some in the 1920's. As I recall, the Salisbury Bank and Trust Company acquired a savings bank.

Q In the course of your duties as Executive Vice-president of the Connecticut Savings Banks Association, has it come to your attention that there have been conversions of savings banks to commercial banks in any other states?

A Yes, there's a recent one in Ohio where the last remaining savings bank in the state converted into a commercial bank, one had previously converted in Ohio and one has converted in New Hampshire.

Q Can you tell me the name of that association in Ohio?

A In Ohio it was the Marietta Savings Bank which has now converted into a commercial bank.

Q And under what name does it operate as a commercial bank, if you know?

A I'd be hard pressed to give you the exact name, but it became part of a bank holding company in this process.

Q Is that Society?

A No, Society is in Cleveland. That converted somewhat [737] earlier. The Society Bank in Cleveland did convert and become a commercial bank, it is now Society National Bank.

Q Approximately when did that take place?

A That took place in the early '50's.

Q So that is it your understanding that the business which had been operated as a mutual savings bank in Cleveland under the name of Society Savings Bank is now being operated under a commercial bank charter?

A Yes, it is.

Q I believe you referred to a similar situation in New Hampshire, was it?

A Yes.

Q And can you tell us what you know about that situation?

A In New Hampshire the savings banks owned the stock of a dormant commercial bank, and they simply converted under the charter of that commercial bank and are now operating as a full commercial bank. They went through a transition period when they operated both as a commercial bank and as a savings bank, but they are now operating wholly as a commercial bank.

Q Do you know whether there are any joint operations as a savings bank and commercial bank in the State of Rhode Island?

A Yes, in the State of Rhode Island, the savings banks are permitted to own a fully owned subsidiary commercial bank and each of the savings banks in Rhode Island do operate a [738] commercial bank as a subsidiary and they operate in the same office using the same personnel.

Q When you were attempting on behalf of the Association which you represent to obtain checking account

powers for savings banks, was there any opposition to those attempts?

A Yes, there was opposition.

Q Would you say that it was strenuous opposition?

A I would say it was very strenuous opposition.

Q And from what source did that opposition come?

A It came from the commercial banks.

Q And why do you think they opposed your obtaining checking account powers?

A I think they don't—didn't want the competition.

Q All right. Doctor Myles, in your opinion, do you look for greater comparability between the powers of commercial banks and the savings banks in the future?

A Yes.

MR. CLARK: I object to that. I think it is just a general conclusion that can't be supported by a specific question, it's just too broad.

THE COURT: Agree to what?

MR. REYCRAFT: Greater comparability.

I can make it more specific.

THE COURT: Comparable except for—

[739] MR. REYCRAFT: I think I better ask it a little differently if nobody gets it.

THE COURT: All right. The question is withdrawn.

Q Doctor Myles, do you—do you see, based on developments which have occurred to date in the State of Connecticut, a trend toward more nearly equal powers between commercial banks and savings banks?

MR. CLARK: I object, your Honor, he's calling for a conclusion as to the changes in the law that no one can predict.

THE COURT: Well, he said that, at least with respect to one aspect of the banking business—that they made serious attempts, which, although failed in the last legislature, came close to succeeding, and perhaps, although it is somewhat speculative, at least the Court should know what efforts the savings banks association is being made.

Now, whether they will reach fruition or not is something else, but I think we should know what's going on, and he's in a position to tell us. Now, what weight I'll give it later is something else.

For example, let's take the other side of the coin, what if he testifies, "We're not interested in checking accounts, we don't want them, none of our members [740] want them, the commercial banks can have it"?

And he were asked, "Do you think you would be a—change in that?"

He said, "No, we held a meeting of 68 savings banks presidents last week and they all voted: no, they don't want checking accounts."

Well, I think that might be helpful to the Court in determining if there's—to what degree these different types of banks are in competition.

Now, the other side of the coin is, "Yes, we want checking accounts, we submitted legislation, we had a very close vote in the legislature despite strenuous opposition from the commercial banks."

So, because of the point the defendants are trying to make, I'm going to accept the evidence. What weight I'll give it, I'll decide later, but let's see what practical efforts are being made in the field.

So the objection is overruled.

A If I may sketch in some broader aspects of this thing, the competition between the thrift institutions—again, this is including the S&Ls and the credit unions—have been of some concern, not merely here in Connecticut, and has been the subject of a number of studies, in—earlier, about three years ago, Congress approved a study of the savings and [741] loan industry which was done by the University of Pennsylvania, the so-called Friends Study; one of the recommendations of that study was for broadened powers for all thrift institutions, including checking accounts and third party transfer payment arrangements.

President Nixon appointed a Presidential Commission on Financial Regulation and Structure. That report was issued, the so-called Hunt Commission Report—was issued in December of 1971. That report also recommended that thrift institutions be granted broader powers.

The New York Federal Reserve Staff recently completed a study which came to the same conclusions. So that there is now a body of some four or five studies all done

by official bodies indicating that the thrift institutions—if they're to survive in a new competitive world where the commercial banks are increasingly interested in retail banking—that thrift institutions must have broadened powers.

So we feel that not only is our position here in Connecticut this, but it has been substantiated by other studies. If the administration, the Nixon administration decides to introduce legislation based on the Hunt Commission Report, it is the likelihood that this kind of power would be given to federally chartered institutions, so this simply gives added weight to our battle here in Connecticut to broadened powers.

[742] THE COURT: When you say the vote was close, do you recall exactly what the numbers were?

THE WITNESS: Well, the vote—the vote was on an amendment to the bill, and that was 15 to 17. 17 opposed and 15—that was, of course, a straw in the wind, and so when the bill itself came up, the vote was—it was a little different. It was then 22 to 13, but some of the people who were supporting the bill saw it was defeated and simply switched.

THE COURT: May I ask you this: had you introduced this legislation at the meeting of the legislature on prior occasions?

THE WITNESS: Yes. It was introduced first in 1967.

THE COURT: Do you recall what the vote was?

THE WITNESS: It was not reported out of committee. In 1969 when it was introduced, the committee reported out a bill setting up a study commission which studied for—the situation for one year, and came out with a tie vote recommendation which threw it back into the legislature in '71, and in '71 it was reported out of committee and came up for vote in the Senate.

MR. REYCRAFT: Your Honor, the exhibits which Doctor Myles has identified this morning are not [743] covered by the specific stipulation I have with the government, so I would like to offer at this time Defendants' Exhibits 61 through 66 in evidence.

And I have no further questions for Doctor Myles.

THE COURT: Doctor Myles, is there a history of savings banks merging?

THE WITNESS: There is not a very long history of savings bank mergers. There were some mergers back in the 1920's, there were some mergers in the 1930's, but then the period of mergers kind of decreased. There was in—renewed interest in mergers in the savings banks in more recent years, but the two savings banks attempted to merge in Norwich, this was successfully opposed by the Justice Department, or at least the case was withdrawn, and since then—

THE COURT: There's no prohibition against it?

THE WITNESS: No prohibition. No legal. Trying to meet the rules and regulations, I might say it's more difficult to merger a mutual institution than a stock institution.

THE COURT: And before cross examination would you explain chart 66? I know what it is, but would you show me how to read it?

THE WITNESS: Yes, these are the percentage share [744] of the market, and across here the years, so that what this is is simply a graphic form of the information contained in—

THE COURT: In 65?

THE WITNESS: Yes.

THE COURT: All right.

MR. REYCRAFT: Could I ask just one more question on that chart, your Honor?

THE COURT: Yes.

BY MR. REYCRAFT:

Q Doctor Myles, the data on—in 66 and in 1969, can you tell us what the trends lines have been in general in 1969, in other words, it shows a decrease in commercial banks' share from '67 to '69, has that trend continued or changed?

A There has been a slight decrease in the commercial banks' share of the market and a slight increase in the savings banks' share of the market, which is explained by the peculiar economic conditions of that period.

Q Could you very briefly tell us what those economic conditions were that had that impact?

A Well, we went into a recession in the economy. The savings rate has increased at a tremendous rate, so that we have nationally savings rates of families and individuals [745] higher historically than they have been for many, many years, so the total of savings increased, during this time the savings banks continued to pay the maximum allowable interest rates, which were well above market interest rates—of interest, so that savings accounts were highly attractive to people during this periods and the savings banks did gain a slight share of the market back.

THE COURT: Obviously, I'm reading this chart wrong, Mr. Reycraft. I see the decline between '68 and '69 rather than '67.

MR. REYCRAFT: Your Honor is correct.

THE COURT: What am I looking at wrong?

MR. REYCRAFT: You are absolutely right. I'm looking at it wrong, it is '68 and '69.

THE WITNESS: Between '68 and '69, and I think while the earlier chart, Exhibit 63, is total savings, these are not exclusively consumer savings, I think the slight changes that have taken place since 1968 are shown on that table in Exhibit 63.

THE COURT: Any objection, Mr. Clark, to the offer?

MR. CLARK: No, your Honor.

THE COURT: There being no objection, the Exhibits 61 through 66 introduced by defendants are now full [746] exhibits.

(Defendants' Exhibits 61 through 66 were received in evidence.)

MR. McENERNEY: Your Honor, I have no questions of this witness.

THE COURT: Any other defense counsel wish to examine?

All right. Cross examination.

CROSS EXAMINATION

BY MR. CLARK:

Q Doctor Myles, D-63 shows, in fact, doesn't it, that

commercial banks' share of total savings is lower than in 1971, it was lower than it was in 1960—'67, is that right?

A Yes, it does. By a fraction of a percentage.

Q So at least in the past five years, we haven't seen much—much change, have we?

A No. In my opinion, however, this is a reflection of rather peculiar conditions that are not expected to remain.

Q And those conditions are what?

A Well, I think as soon as the structure of interest rates changes the competition will resume. The fact that the commercial banks have not lost as much, or at least to me, the fact that the commercial banks have not lost as much of a share of the [747] savings market as might have been expected under these conditions shows that they're still pretty competitive with the savings banks.

Q The commercial banks right along have maintained their interest rates—

A No, during this period, several, at least, of the commercial banks did actually cut their rate of interest on savings accounts, they lowered the ceilings.

Q And did the savings banks cut their rates?

A No. No, they did not.

Q So the decrease in rates by the commercial banks had no relation to what the savings banks did, did it?

A No.

Q It was related to other factors?

A Yes.

Q And as far as you know, they didn't take the savings banks into account when they made that decision to cut the rates, did they?

A Well, I assume they took into account the competition and what effect it would have on them.

Q But I assume that it wasn't significant enough to them to make a difference?

A No. Because I think here the question was their earnings, what they could earn on money loaned out, and they [748] cut their rates accordingly. Their savings rates accordingly.

Q Has your Association decided to introduce its bill in the next legislature?

A We—the decision has not been made as of this point, but—

Q Why not?

A Well, I think this is a little dependent on the composition of the state legislature, we're going through a rather unique situation again, as far as the reapportionment of the state legislature, and I think there are some factors that we have to consider before we introduce legislation.

Q In other words, you don't feel at all confident at this point that you are going to introduce your bill and get your legislation next—next time, do you?

A Well, I feel relatively confident we will introduce it if conditions are right, our objective hasn't changed.

Q That depends on the election?

A We have to determine our tactics.

Q And that depends on the election?

A And that will be influenced by election, certainly.

Q These national studies you mentioned, the Friends Study, was there any—any legislation introduced as a result of that?

[749] A There was no legislation introduced as a result of that.

Q So there have been no—

A Well, there have been some elements of legislation and certainly the Federal Home Loan Bank Board has broad regulatory authority, and they have adjusted their regulations and the powers and rights of the savings and loan associations as a result of this.

Q Savings and loan associations have not obtained the right to accept demand deposits, have they?

A No. At one point the Federal Home Loan Bank granted the savings—federal savings and loans the right to have a bill paying service, which was comparable to the—to checking accounts, however, in the face of very extreme commercial bank pressure the Federal Home Loan Bank board backed off that.

Q It appears that the commercial banks do have considerable clout, both nationally and locally, when it comes to matters such as that?

A We think so, anyway.

Q The Hunt Commission Report also would require extensive legislation?

A Yes, it would.

Q Both at the federal and state level?

A Yes. The implementation of it would. There is a [750] treasury task force which is at this point studying the Hunt Commission Report and presumably preparing legislation.

Q You don't know whether they are preparing legislation or not, do you?

A They're preparing legislation. What it's fate will be, we don't know.

Q Mutual savings banks, of course, accept savings accounts and so do commercial banks, don't they?

A Yes.

Q Do mutual savings banks have a maximum limitation of the size of these accounts?

A Yes. We have a $50,000.00 limit on savings, commercial banks—

Q Commercial banks have no such limit?

A No, the commercial banks can take larger accounts and, in fact, do.

Q And, of course, commercial banks accept demand deposits and savings banks do not?

A Yes. We do have one advantage in Connecticut which as a result of a charter provision has been in the checking account business since 1897.

Q Do you know what proportion of their deposits are in demand deposits?

A I can't give you that figure offhand. It's—it's [751] roughly around 10%, but I can't give you a precise figure.

Q And how long have they had this power?

A As I say, since 1897.

Q Do mutual savings bank have the power to own corporate bonds and stocks?

A Yes, they do.

Q And does that include commercial bank stocks?

A Yes, it does.

Q Do mutual savings banks in Connecticut own commercial bank stock?

A They do.

Q Do commercial banks have the power to own similar assets?

A State chartered nonmember banks have this right, but member banks of the Federal Reserve do not have the right to hold equities and national banks do not have this right.

Q Do mutual savings banks have the right to make loans to financial institutions?

A Do you mean do they have the right to make loans to commercial banks and savings banks?

Q Or other savings institutions?

A Not to my knowledge, no.

Q Do they make loans to brokers and dealers in securities?

A No, they do not.

[752] Q Do they make commercial and industrial loans?

A Not—not, per se, they have the right to mortgage industrial properties and commercial properties, but not to make business loans.

Q What is the proportion of their mortgages, in general, which are—which are on commercial property?

A I can give you those figures here. It would probably run approximately 50—15% of their mortgage portfolio, would be in commercial and industrial loans.

Q Do you know how that compares to the commercial banks?

A I do not, no.

Q Would you expect—

A These figures are not readily available.

Q You would expect commercial banks, wouldn't you, to have a higher proportion of their loans to—secured by commercial property?

A Not necessarily, but it is possible.

Q Now, you mentioned that savings banks have the right to have the powers to make installment loans, they must be installment, is that correct?

A Yes.

Q They must have a regularly—

A They must be installment loans.

Q So they can't make single payment loans to [753] individuals, for example?

A They cannot. We have had such legislation in, but it hasn't been successful.

Q And commercial banks do have that power, don't they?

A Yes, they do.

Q They have a maximum—mutual savings banks have a maximum limitation of $5,000.00?

A Thousand dollars, yes.

Q So would you expect that that limitation would prevent them from making loans on such things as mobile homes?

A Above $5,000.00, yes.

Q And other large equipment, such as trucks and trailers?

A Yes.

Q Cost more than $5,000.00?

A Yes.

Q Do mutual savings banks—are they in the credit card business?

A No, they are not.

Q Do mutual savings banks make other loans to hospitals, churches and so on not secured by real estate?

A I think all of these would be secured by real estate, yes.

Q Do mutual savings banks operate a trust department?

A No, they do not.

[754] Q They have no trust service at all, do they?

A They have no trust powers.

Q Personal or corporate?

A No. In the strict meaning of that sense—that term, yes.

Q Do they offer safe deposit services?

A Yes, they do.

Q Do they offer computer services?

A Not to—not to outside organizations.

Q Such things as payroll accounting or professional billing?

A Not currently.

Q Tenant billing, this sort of thing?

A No.

Q Do they have—do they sell travelers' checks?

A They don't sell travelers' checks, but they sell bank money orders, bank checks.

Q They don't sell travelers' checks?

A But not travelers' check as such.

Q Do they sell foreign currency?

A No, they do not.

Q Do they have international services—departments?

A Well, there are one or two banks where there are heavy ethnic populations in the community where they attempt to assist [755] them in this activity.

Q Do they make domestic wire transfers of money?

A No, they do not.

Q Do they provide credit information for people who seek it on—individuals?

A Well, to the extent that this is now possible under the fair credit reporting, they do share credit information, yes.

Q Do they make collections of items?

A For other individuals, no.

Q Do they isue letters of credit?

A No, they do not.

Q Doctor Myles, assuming that some kind of checking bill is passed—and I think you stated that, of course, it does depend upon a lot of—a lot of contingencies—you expect at all that savings banks would offer such a service?

A It is not likely that all savings banks will offer it, no.

Q What are some of the reasons why they wouldn't?

A Well, I think it depends upon their own local situation, it depends upon what they think the capacity of the individual bank is and so forth. It has certainly been the policy and intent of our Association to assist each and every bank regardless of size in being able to offer this service.

[756] Q What are some of the problems, however, that banks would encounter should the decide to offer?

A Well, I don't—personally, I don't see any real problems they may encounter. I think that the handling of the checking account business is not that difficult, and

certainly a number of the commercial banks have indicated their willingness to perform all of the functions involved in the checking account area.

Q A number of commercial banks?

A Yes.

Q They would do this—

A On a service—on a service bureau basis, yes. So I don't really see any limitations or major problems that a bank would face in offering this service.

Q Banking relationships are rather long-term, aren't they? They—they—people come to become used to their bank and stay with them, don't they?

A Yes.

Q Is that a factor that would affect the extent to which mutual savings banks could gain business through this checking account privilege?

A Well, I—the various market surveys we have done have indicated that the mutual savings banks have not been successful or as successful as the commercial banks in reaching [757] the young people. Historically, the first kind of banking service people used was a savings bank, now they tend to use checking accounts and borrowing privileges first, so that part of the competition would be for the young people and people entering the banking market. If we get checking account rights, or when we get checking account rights, that there's going to be any great exodus of checking accounts out of the commercial banks into savings banks, so it would be a long period of time, certainly, before these things were built up.

We do feel that what we are basically competing for are savings accounts and we want to be able to compete with commercial banks in attracting customers by offering them a full range of service.

Q It is the full range of services, then, that you are concerned with, isn't it?

A Yes.

Q And that's the important factor which you—which you feel is contained in this whole checking account problem, isn't it?

A Yes.

Q And, in fact, you—you testified, didn't you, when

that—when the bill was introduced in '69 on this subject, didn't you?

A Yes.

[758] Q And I believe your testimony was as follows: "We are concerned because commercial banks based largely on their ability to offer checking services and by continually stressing that it is a service not offered by mutual savings banks, they are attempting to divert funds from the thrift institutions, the threat is from one-stop banking, the full service concept which can end only by driving the savings banks out of existence," was that your testimony, Doctor Myles?

A Yes.

THE COURT: With respect to the point being made now in the last few questions, may I ask you this, Doctor Myles: has any study been made of how many people will —how many people have a checking account, naturally in a commercial bank, but that same person has put their savings in a savings bank despite the fact that he could have one-stop banking at the commercial bank? In other words, John Doe has a commercial account—I'm sorry, John Doe has a checking account in a commercial bank on Street Y, but will walk three blocks to put his savings into a mutual savings bank on Street X, has any study been made of that?

THE WITNESS: This information would be exceedingly difficult to arrive at, but obviously, we wouldn't have [759] any savings accounts with anybody with a checking account if this wasn't, in fact, happening.

THE COURT: Now, if the savings banks get checking acount powers, isn't it more likely or isn't it almost clear that the commercial bank will lose the checking account, if somebody wanted to do one-bank shopping—or stopping, because he has his savings in the mutual savings bank, he has a checking account in a commercial bank, where he could have a savings bank, and he says, "No, I don't want to do that," so it's easier for him to make the decision to withdraw his checking account and bring it over to a savings bank if the one-stop was on his mind and convenience, wouldn't that be true?

THE WITNESS: Yes, we certainly would hope that some of that would take place.

THE COURT: And secondly, if the savings bank devised some system—and I am not even sure this is legal or possible as a practical matter—where you can keep a very, very minimum balance in your checking account so that your money is gaining interest, and on some kind of short notice or some easy way of filling out a slip, have the money transferred from your savings account into your checking account [760] to cover some checks that you are making out for the month, whereas if you go from your savings bank now, withdraw money, walk down the street into a commercial bank, it's just too much bother, so people might keep higher balances in their checking account today when they would in the mutual savings bank system whereby you could write out a check and get the money transferred from the savings account immediately into the checking account? Did you follow that question?

THE WITNESS: Yes, yes. This—all I can say is that the commercial banks are well aware of this and there are, at least to my knowledge, two commercial banks in the state that offer what they call free checking accounts with a minimum deposit held in a savings account, and so they say: keep a minimum balance of $300.00 in your savings account and you get free checking service, and some of the commercial banks have also developed so-called one-statement banking, which your monthly statement includes not only your checking account, but also your savings accounts and so forth, so that they are preparing, certainly, for increased competition along the lines you suggest, that there is a definite advantage [761] in this type of arrangement, and hopefully we would attract people who want to keep their saving account and checking account in the same institution and might switch.

However, as Mr. Clark had indicated here, people do tend to establish banking connections, and they don't change them quite that rapidly, so we don't see any mass exodus of accounts—checking accounts out of commercial banks.

I might just say here that one of the difficulties that we foresee in the future is the emergence of the electronic payment system where almost all of the financial transactions will take place through a computer network in the

country. I just recently visited Denmark where they're further ahead in this system than we are here, and as a result of automated clearing houses, I am told that 90% of the Danish workers have their paycheck credited directly to their checking account. Prior to this time, the savings banks there had checking account facilities, this share of the savings market dropped from 50% to 30% simply because the commercial banks got their hands on the guy through his checking account, and now the savings banks there [762] have checking accounts and they have recooped 4% of the market, savings market, so they've gone back up to 34%. And they're in the process, and by 1973 will have a fully evolved bill paying, electronic bill paying service, and so on, and I think that it is quite clear, at least to us, that unless we're part of that system, that we will experience exactly what happened in Denmark. And the way into this system is through the right to have demand deposits and become part of a clearing house network.

So I think the stakes are high in the future.

THE COURT: These were some of your thoughts when you gave that testimony?

THE WITNESS: Yes.

THE COURT: Which really was a conclusion?

THE WITNESS: Yes.

THE COURT: But in back of that conclusion were thoughts such as you have expressed?

THE WITNESS: Yes.

THE COURT: Go ahead, Mr. Clark.

Q Then, it does appear, doesn't it, Doctor Myles, that commercial banks today are more effective in utilizing their full service capabilities—

A Yes.

[763] Q —than they used to be, is that right?

A I would say so, yes.

Q So full service banking today is more significant than it was in years past, is that right?

A I would say so, yes.

Q By the way, did all savings banks in the State favor the bill or the introduction of demand deposit services?

A No. It is perfectly true that not 100% of our banks are enthusiastic about checking account services for a number of different reasons.

Q And there was at least one rather substantial savings bank who went on record as opposing it, is that right?

A That's correct.

Q You testified, also, quote, "Willis Alexander, the President of the American Bankers Association, has stated: for too long many bankers have feared competition, both among themselves and with their nonbank competitors, and have sought insulation from the harsh but effective realities of the free enterprise system. Gentlemen, we would—the mutual savings banks of Connecticut—would like to be able to assist Mr. Alexander in a campaign for more competition."

You haven't changed your view on that?

A I haven't, no.

Q By the way, are there savings banks in Pennsylvania?

[764] A Yes, there are.

Q Rather substantial ones?

A There's a limited number of them, but they are large. They are located primarily in Philadelphia and Pittsburgh, and there are only seven of them in the state, but they are large institutions.

Q And there are savings banks in New Jersey?

A Yes, there are.

Q And they have the right to issue—to accept demand deposits?

A The savings banks in New Jersey have the right to issue checks.

Q How long have they had that power?

A Well, one of the banks had this—as in Connecticut, one of the banks had this in a charter rights and has been issuing checking accounts since the late 19th Century, and then as a result of a court decision, now 19 out of the 20 savings banks in New Jersey offer checking account service.

Q And when was that court decision, do you know?

A It's somewhere in the early '60's, I'm sorry, I should have that at my fingertips, but I don't.

Q And do you know the approximate percentage of their total accounts which are in demand deposits?

A They—as I recall, they have about 2% of their [765] deposits in checking account form.

MR. CLARK: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. REYCRAFT:

Q Doctor Myles, Mr. Clark asked you some questions about the use of real estate loans to provide financing for business enterprises, and you testified, I believe, that about 15% of the portfolio of savings banks in Connecticut was this kind of loan?

A Well, it would be industrial and commercial, that is: apartment house types of loans.

Q Right. In other words, this is the kind of a loan which a commercial bank could also make?

A Yes.

Q And would ordinarily be classified as a commercial and industrial loan, is that right?

A Well, I think the terminology here has to be clarified. I think when a commercial banker talks about commercial lending, he's talking about lending to a business for inventory purposes, working capital purposes and so forth. When we talk about commercial lending, we're talking about lending on income producing property as contrasted to pure residential property.

[766] Q Suppose I have a—I own a gas station or a —some business enterprise which—on real estate which I —which I own, can I go to a savings bank and obtain a loan on that real estate?

A Yes.

Q To use in my business?

A You could, yes.

Q And the savings bank would restrict the purposes to which I put that loan?

A Well, it would have to be secured loan, secured by a mortgage.

Q Right. All right. Are you familiar with the term "equity kicker"?

A Yes, I am.

Q What does that term mean?

A Well, this means that the mortgage lender shares in some of the income derived from the property. For example, in an apartment house they may share in the rental income or they may retain ownership, right of the land at the expiration of the mortgage period. Or in a shopping center, they may get some percentage of gross rentals.

Q And this enables the savings bank to participate in the business success of the commercial enterprise, doesn't it?

A That's right, because these types of loans are more [767] risky than residential loans.

Q Doctor Myles, you have also been asked about trust powers by savings banks, and you have testified that they do not have such powers in Connecticut. Do you have any knowledge of whether savings banks are seeking such powers?

A Well, savings banks in New Jersey do have trust powers, and at least one large savings bank in New Jersey does have a trust department.

Currently, in our thinking, we are not seeking them, and I don't know of any other state that is seeking trust powers.

Q In this the kind of service which a savings bank, in your opinion, could provide for the people who—regard as its general group of customers?

A There is—there is no reason why a savings bank could not provide this service. However, the economics of the trust business are such that you have to have a fairly large sized operation to make it profitable.

Q How about computer services, would savings banks be capable of providing computer services to businesses, generally? Do savings banks now use computers?

A Yes, they do. And I think that certainly the savings banks could offer computer services to outsiders. We

—but I think we haven't been sufficiently involved in internal computerization that they haven't branched out. Almost all of our [768] banks—I think there's only now possibly one bank that's not on line, which means that they are hooked up to terminals, they have terminals at each teller station and all of their accounts are computerized, we have one bank which has a service corporation which does service about 34 savings banks, and our larger banks do have their own computer installation, and it is certainly true at some point if they have excess computer time and staff, that they could sell it to outside organizations.

Q When you refer to the savings bank which has a service corporation and services other savings banks, these other savings banks are serviced as customers of the savings bank with the service corporation?

A Yes, yes. This service corporation is a wholly owned corporation of this particular bank.

Q And is there any reason why those same services could not be offered to nonbanking business enterprises?

A There is no reason currently other than the one I indicated here, that the problems of—internal problems of developing and using this are enough for the moment.

Q Now, you referred, also, in response to one of Mr. Clark's question to two banks which—two commercial banks—which have this combination demand deposit savings account where you have a minimum—keep a minimum amount in your checking account and the balance is in your savings account, which two [769] commercial banks are those?

A Connecticut Bank and Trust Company and the Union Trust Company. There may be others, those are the two that I'm aware of.

Q You testified, also, about the development of the electronic payments system. Do you have any opinion as to what impact that system as it develops might have on branching by commercial banks and savings banks?

A Idon't think that that system, per se, has an impact on branches, but parallel with this development, of course, is the development of fully automated branch facilities. You have pilot programs around the country —there's a commercial bank in Ohio that has fully auto-

mated self-standing full service branches—and to the extent that this kind of thing can be tied into the electronic payments system, what it will do will be to change branch banking as we now know it, instead of staff branches, you could wind up with these kinds of things on every street corner.

Q And savings banks will seek to become involved in this kind of system as well, in your opinion?

A I would expect so, yes.

MR. REYCRAFT: Thank you, that's all I have.

THE COURT: Recross?

MR. CLARK: No recross, your Honor.

[770]— BY THE COURT:

Q Dr. Myles, I suppose over the last few years, in your capacity and with your background, that you have been consulted or have been privy to discussions as to whether savings banks should go in a particular town or whether they should branch—branch out in various ways, have you not?

A Not really. We do every—our savings banks, of course, in some situations are competing with one other. And I have never felt that I should be involved in this aspect of the thing, so I prefer not to.

Q Well, that's why I said either consulted or been—

A I generally know what's going on.

Q —listening in—

A I don't intervene.

Q —what presidents and executive officers of these banks are saying? Wouldn't you say you know what's going on?

A Yes, I would say—

Q To what extent in these discussions that you overheard, does the commercial bank's presence in the town affect the discussions? Or is it a consideration that they take into account? In other words, do the commercial banks—let me word it another way. Do the presidents and executive officers of savings banks talk about, and are they concerned with, competition commercial banks are giving them or not?

[771] A Well, I am not sure if this answers your question, but commercial banks have somewhere between three and four times the number of branches as the savings banks do, and again, in terms of asset sizes, the two industries are approximately the same. The economics of branching for savings banks and commercial banks is quite different, because savings banks have to pay interest on one hundred per cent of their deposits. It takes a much larger operation—branch operation—to be on a break-even basis. So a commercial bank that could start a branch that's, say, built up to a half a million dollars in deposits and it would be a break-even operation. It would take a million and a half of deposits in a savings bank, so the savings banks have been somewhat slower in branching. But I think the recognition that they have to provide customers with convenience if they're going to compete has led to a considerable amount of branching activity in recent years in trying to match the convenience of the commercial banks as far as office location is concerned.

Q Well, then, your point is that—at least from your knowledge and experience—that these banks are in competition with each other?

A Yes.

Q In cert—

A Certainly for savings accounts they are in competition.

[772] Q I was going to add in certain areas.

A And it is said frequently because we have a rate differential—we can pay higher interest rates on savings accounts—that this equalizes one-stop banking, but we don't believe that. Our experience is not such.

THE COURT: All right, thank you Dr. Myles. I am going to give the Court Reporter a five-minute recess and then we will take cross-examination of Mr. Hawley.

(Whereupon, a recess was taken.)

[773] MR. McENERNEY: I wonder if it would be appropriate for me prior to Mr. Clark's examination of Mr. Hawley—if I may examine him?

THE COURT: Mr. Hawley?

MR. McENERNEY: Yes.
THE COURT: By all means.

CROSS-EXAMINATION

BY MR. McENERNEY:

Q Mr. Hawley, have you or have you not noticed in recent years that there has been a number of corporate headquarters or divisional headquarters of substantially large corporations moving into Fairfield County?

A Yes, I have noticed that.

Q Can you tell us whether CNB is the lead bank for many of these corporations?

A We are the lead bank for none of those corporations.

Q Of your own knowledge do you know where these large corporations tend to bank—to do their banking business?

A I would presume they would be in New York, Chicago.

Q Do you have any knowledge as to the reasons why these corporations might deal outside of where they are located, where their corporate headquarters are located?

A Because the financial needs which they have are far beyond our ability to provide.

[774] Q Well, would there be some services also?

A There would be corporate trust services, international banking services. Those would be the principal—

Q Does your bank have some customers which have been with you for a number of years? I mean just what I would term old, old time—

A Commercial accounts?

Q Yes, commercial accounts?

A Yes. Industrial firms. Yes.

Q Have you or have you not noticed as these customers tend to get larger, get bigger, that their needs, their financial needs become larger?

A There are cases in our service area of corporate accounts which we have where our account relationship

has become less important to them and to us because of their growth in size and our subsequent inability to provide the corporate services they need.

Q In other words, would you term these customers as out growing CNB?

A They have outgrown us as far as our being able to furnish the financial banking they need in their conduct of their business, that's correct.

Q Would these be the type of customers that, although perhaps you would be with them—you had a relationship for a [775] number of years, that they are starting to outgrow and starting to look around for other banking connections?

A They have to.

Q Now, in this class of customer, when they start to outgrow you what effect, if any, might that have on their relationship with your bank?

A We become less important to them, they open relationships with other banks who have an opportunity to work closely with them in their financial needs and move into a more important position, a position that we previously may have had entirely.

Q In other words, would it be true that—

A I mean, we have cases where ten years ago we were providing all of the credit needs of the company which now we are providing maybe six or eight per cent.

Q Now, would that have anything to do with your inability to lend the amounts of money that these corporations need?

A Yes.

Q Now, if a customer wants to borrow more money from your bank than your legal limit is about to provide—

A Correct.

Q —isn't there another way that this could be accomplished through participations?

A We do. When we run into a credit that we can't handle [776] ourselves we will participate this loan out to some other bank.

Q Do you have any opinion as to whether this is

desirable from your point of view, from your bank's point of view?

A It really is undesirable, because it introduces into the banking picture of this company another bank who has an opportunity to become acquainted with them, to perhaps cultivate the business, and it's a competitive factor, it could be a serious thing to us.

Q Could this also not be an opportunity for the larger bank to get their foot in the door and court this account away from you?

A Exactly. That's the point I was trying to make.

Q Do you not find that the participation from the standpoint of the borrower has any disadvantages?

A Obviously he would rather not do it because it involves credit applications, processing loans, processing papers, corporate resolutions and all of the paper work involved in doing business with two different banks.

Q Would it be fair to say that participations in your opinion are a fact of life, but not especially attractive to you?

A Yes, they are for our bank. We want to maintain the relationship, yet we are forced to introduce another bank to our customer.

Q Could you tell me what effect, if any, a larger lending [777] limit as a result of this consolidation might have with respect to participations or with respect to those customers that need participations?

A Well, if we can by this consolidation improve our lending limit, double it, why, to something over $4 million we would be able to provide, obviously, stronger credits to these companies and there would be a number of companies that we could handle entirely.

Q Do you feel that you would be less likely to lose some of these customers?

MR. CLARK: Your Honor, I want to make the same objection about leading questions.

THE COURT: Yes. Well, they are leading to a degree, but actually I think he is saying the same thing he said yesterday in a somewhat different form. So, just to move along I will allow the leading questions, but if you get into a new area that Mr. Reycraft did

not cover yesterday, then I suggest you let him testify without leading questions.

MR. McENERNEY: Yes, your Honor.

THE COURT: Go ahead. Actually, this is what you were saying yesterday in one part of your testimony, that if this merger was approved you could have a higher lending limit, you could service more [778] appropriately some of the big industries and businesses in your particular area.

THE WITNESS: In our service area.

THE COURT: Yes.

THE WITNESS: Exactly.

THE COURT: Go ahead.

Q Do you know whether or not there is—is any need for international banking services in your service area?

A Yes, there is, actually, in increasing numbers. The Connecticut Development Commission, I believe, has estimated this business is going to quadruple in the State of Connecticut by 1980, which is certainly an important consideration in our planning. They, I think, estimate that exports will approximate $2 billion by 1980, and obviously this is an important part of—piece of business.

Q Well, is CNB presently involved in international financing?

A No.

Q You are not?

A No.

Q Do you know where the headquarters of the Customs is located?

A It's right here in Bridgeport.

Q In your opinion would this have any bearing on the [779] need for international services?

A It indicates to me that there is an important volume of international business being done here and we do know that our two banks in Hartford, the Connecticut Bank and Trust Company and the Hartford National Bank, are deeply involved and we would like to be—and certainly would do everything we could, too, if we can effect this consolidation to compete with these fellows.

I believe the Connecticut Bank and Trust Company's international department has 29 men; and I believe the comment was made in their annual report that they had men travelling the world.

Q Do you have anything like that at all?

A No. The Hartford National Bank has joined a consortium, The Allied Bank International, which is set up entirely for international business.

Q Now, Mr. Hawley, in connection with your branches, can you tell us whether or not your branch managers have a lending limit?

A Yes, they all do.

Q Either unsecured or secured?

A They all can lend on their own signature.

Q Is that the same throughout your system or does it differ from branch to branch?

A It varies with respect to the individual's experience and credit knowledge.

[780] Q Now, if a borrower wanted to borrow $25 thousand, he walked into one of your branches, and assuming his credit—

A The loan could be consummated at the branch.

Q Assuming his credit worthiness—

A Correct.

Q —it could be consummated there?

A Yes.

Q Can you tell me whether your branch managers are involved in any way in community affairs?

A Well, I guess my senior officers have heard me say a number of times that my concept of the Connecticut National Bank is—as presently organized with it 51 offices, we like to think of these as 51 individual banks with Bridgeport as the service center providing the services that these branches need in order to operate. In most cases, not a hundred per cent of the cases, but in most cases the managers live in the towns where the branches are located and they are encouraged to and willingly participate in town activities whether it be Boy Scouts or Girl Scouts. We have fellows who are town treasurers, we have got fellows who are members of board of finance, on school building committees, and they

become, you know, an integral part of the town in which they are located.

Q Do you have any branches in and around Bridgeport, for example, that are in Spanish speaking areas? [781] A Yes, we have one major and one—I'll say two, yes, two where we have a measurable amount of Spanish speaking business. One is to a greater extent than the other.

Q In those branches is there a requirement that there be some Spanish speaking personnel, bank personnel?

A In both offices we have Spanish speaking personnel.

Q Mr. Hawley, do you know whether or not your bank presently does construction lending?

A We have done some front money financing, yes.

Q How would you characterize that? I mean in terms of volume, in terms of amounts?

A Very modest.

Q Do you know whether or not other Connecticut banks are involved—

A Oh, yes.

Q —in this?

A It is a desirable business.

Q If the consolidation were to take place do you have an opinion as to what your emphasis might be in the construction financing area?

A I think—studying that—that asset makes—I would suspect that we could do more in the field of construction financing. In other words, I am speaking now of—when I speak of front money—putting up money subject to a permanent [782] mortgage.

Q This is what? Interim financing?

A Yes, interim financing. Correct.

Q Not the long term?

A No, no.

MR. McENERNEY: All right, your Honor. Thank you.

THE COURT: Any other defense counsel wish to ask any questions?

BY THE COURT:

Q Mr. Hawley, I suppose that before you and your executive committee, your officers actually agreed to this consolidation that many factors were weighed pro and con?

A Yes, your Honor.

Q If a banker, such as yourself, had a choice of meeting competition—and from what I can gather, you feel, at least it is your opinion, you are getting the squeeze from the north from the Hartford banks, from the west from the New York banks, from the east from the Boston banks—would you not prefer to do it by de novo branching rather than by merger, if for no other reason than by de novo branching it is, quote, yours, but by merging you have got a partner?

A Would I prefer to do it by de novo branching?

Q If you could?

[783] A I couldn't do it. I couldn't possibly develop a bank that could offer significant competition to the two Hartford giants through de novo branching. The time is not there nor the money.

Q All right. Now, the point I am trying to make is: If the competition—that is why I led into the question with a statement of the squeeze—if the competition were not there, in other words, there were no Hartford banks giving you the squeeze, would you not prefer to expand through de novo branching?

What I am trying to find out is, from your point of view is the merger something that you prefer not to have if you could get along and survive and compete without it?

A The merger route is—if I understand your question, your Honor, the merger route is an attractive route because with it you acquire potential management personnel. I mean, in our particular case I can cite case after case of people whom we have acquired through merger who now are important people in the organization, and this means a lot.

Q All right, then, let me ask you directly. For X amount of years you have had an aggressive history, as

one lawyer put it, in expanding, and primarily you have been doing it by de novo branching?

A That's correct.

[784] Q Doing it with your organization, with your people, with your capital, with CNB's management. Now, all of a sudden, to continue to expand, which you want to do, you switch to merger. I am trying to find out why you are doing it.

A In some cases it's been a matter of necessity. We lost out on a couple of merger deals because of price. We have—we bid on banks and lost, which is—in this particular area forced us into the de novo route.

Q Were some of these banks smaller than the First New Haven?

A Yes.

Q So, in other words, during your history of expansion you have tried to acquire smaller banks throughout Connecticut and just were taken out by price or refusal to sell?

A Yes.

THE COURT: All right, cross-examination.

[785] CROSS EXAMINATION

BY MR. CLARK:

Q Then you preferred that merger route, didn't you, Mr. Hawley, of those two banks that you spoke about?

A Preferred that route.

Q That was your first choice, wasn't it?

A In those cases, yes. Bear in mind, these took place, most of them, before I was in the position that I am now, but I can recall having lost mergers on a price basis.

Q And what did you do after you lost those mergers? Did you enter those markets?

A In two of the cases, yes.

Q And you did it by de novo branching?

A De novo.

Q Even though that was less attractive to you than the merger?

A Yes.

Q Mr. Hawley, does CNB publish the minutes of its board of directors? Is it public knowledge what goes on at the board of directors?

A We don't put them in the paper.

Q Why not?

A Because we consider them to be the deliberations of the board of directors in their responsibility as representing [786] the shareholders of the bank and the management of the bank.

Q But you don't want the general public to know what goes on in your board of directors meetings?

A No, I don't think we do.

Q Is this for competitive reasons?

A I just think it is sound business practice to attach some confidentiality to the deliberations of the board of directors. It is their —

Q Well, there are certain decisions, certain things that go on in the board—board meetings which you would rather not have your competitors know about?

A Yes.

Q What are some of these things which you consider to be confidential, can you—can you describe some of them for us?

A Well, if we were considering—

THE COURT: I suppose a new member of the board of directors who was rejected by the nominating committee's recommendation, I certainly wouldn't think you would want that—

A Well, competitively—we're discussing rates, I mean we don't—this is a competitive thing in our industry. If we're considering some form of expansion as the branch has grown in recent years, these matters, we think, are confidential.

[787] Q Rates, including rates on loans?

A Well, we discuss them, yes. Yes.

Q Real estate loans?

A Yes.

Q Rates on—

A Loans in our bank are set by the management and discussed with the board.

Q And the same is true with rates that you pay on deposits, is that right? Savings and time deposits?

A Yes.

Q By the way, on the subject of loans, does CNB buy dealer paper, they buy personal loans from automobile dealers?

A Yes.

Q What proportion of your total personal loans, installment loans, is that, do you know?

A Oh, boy. Could I get that for you?

Q Yes, if you wouldn't mind. I would appreciate that.

A How do I go about getting that?

Q I'm sorry. If you don't know, fine. If you can find out for me, perhaps by Wednesday, I would appreciate it.

MR. REYCRAFT: If you will tell us the number, Mr. Clark, we will get it for you.

MR. CLARK: The general proportion to the total of consumer installment loans which you buy from [788] dealers, either finance dealers or automobile dealers.

MR. REYCRAFT: We'll give you that.

Q Well, you do have on your board of directors, don't you, several members who are also members of the board of trustees of People's Savings Bank?

A Yes, we do.

Q And it is true that—isn't it, that recently there was a motion brought before the shareholders meeting to eliminate these interlocks?

A Yes, there was. There was a resolution proposed and submitted to our shareholders at our 1972 meeting.

Q What was the bank's position on this motion?

A The bank's position—we opposed it.

Q Why?

A I—we opposed it because we felt until it was illegal to have men serving on the board of mutual savings banks and a commercial bank that we would not eliminate this kind of interlock because we felt it put us at a disadvantage—one of—there are several reasons.

Number one, I feel very strongly that the board of a commercial bank should be as broad a board as possible in terms of the type of membership, from the point of

view of the men's experience, their talent, their ability, community activity [789] and—which is the first thing.

The second thing is that if we put in such a prohibition and other commercial banks did not, it might have, I think, a very unfair effect upon us in our ability to secure directors. In other words, what I'm saying is that—let's say that there was a man who was a director of the mutual—a trustee of a mutual savings bank and I was prevented because of a decision we'd made from even talking about him coming on our board, this isn't right when it is not illegal. The moment it becomes illegal, of course, we'll comply. Obviously, there's been a lot of talk about it, our executive committee has discussed it at great length.

Q You don' think that your bank is at a disadvantage because several of your members are privy to your interest on loan—loan interest rates and savings accounts?

A No, because—no, I don't.

Q Do you have any interlocking directors with City National Bank or State National Bank?

A No.

Q Why not?

A I don't believe it is legal.

Q I think you are right. If they were legal, would you have a different opinion?

A No, I wouldn't be interested in having a director on [790] my board who is a director of a commercial bank.

Q Why not?

A I wouldn't want to divert his attentions from the responsibility he had at the other bank.

Q Well, your directors of People's, trustees of People's have responsibilities at their bank, don't they?

A Yes, but that's a mutual savings bank, you talked about a commercial bank.

Q Yes, yes. Exactly.

A Okay.

Q So there is a difference, isn't there? I mean you have some—you obviously have some difference in your mind between these two institutions?

A Uh-huh.

Q Does People's own any stock in Connecticut National Bank?
A Yes, they do.
Q How much do they own?
A I believe they own—well, this is awfully close, Mr. Clark, 45,000 shares.
Q That's about 3%, is it, of your total—total shares?
A That would be less than 3%, it would be—well, between 2½ and 3%.
Q What position does your brother hold with People's?
[791] A Samuel Hawley?
Q Yes.
A He's Chairman of the Board.
Q What interest rates is Connecticut National now paying on its passbook savings?
A 4%.
Q What is the maximum it could pay?
A 4½%.
Q Were you once at 4½%?
A Yes, we were.
Q When did you go down to 4?
A We reduced that, I believe it was in July of '71.
Q What are the savings banks paying on passbook savings?
A 5%.
Q Have they reduced their passbook rate recently?
A I don't think so, no.
Q So your—your reduction had—was not related to any action on the part of the savings banks, was it?
A No.
Q What did bring about this?
A We did it simply—it was a management decision with respect to the way our earnings were running, we had to examine our costs very carefully and our expenses and bank earnings were softening some, interest rates on the other side were softening, on [792] the income side, and we had to look for ways to maintain our earnings, and we felt that a reduction of a half a point in our straight savings was the reasonable thing to do in order to bolster up our earnings picture.
Q You know what the passbook rate is in New York?

A No, I don't.

Q How have your savings accounts grown since you reduced your rate?

A They have been flat and almost—well, off very modestly.

Q So at the present, then, you don't consider yourself to be competing with the savings banks for those deposits?

A Well, we have another instrument. We just don't have a straight 4% type of account.

Q But that's the one I'm speaking of now, the passbook?

A Yes.

Q Did your bank join with the other commercial banks in opposition to the demand deposit bill on the part of the savings banks?

A Yes, we did.

Q What efforts did the commercial banks make to defeat that bill?

A Well, I presume we tried to employ the same efforts the savings banks did to gain the bill, by talking about this [793] with legislators, discussing the—when the bill came out, analyzing it, discussing it and we opposed it and a public hearing was held in Hartford on this issue, our views were made known and our efforts were to defeat the bill.

Q And you conducted an advertising campaign, did you?

A Yes.

Q Did your bank contribute money to this program?

A Yes.

THE COURT: Wouldn't that put those members of your board who are also on the mtuual savings bank board in a very awkward position when these votes were coming up as to what the bank's position would be? I'm not being critical, because it is legal, but I think you implied before there might be a conflict between a member of the board who also served on another commercial bank's board, but I gather from inference you didn't think necessarily there was a conflict between the two boards having the same member if one of the boards was a mutual savings bank and the other was a commercial.

Now, just take that incident that Mr. Clark brings up about authorizing expenditures for money for lobbying, shall we say, advertising, I would be curious to see how—or which hat a member who [794] had an interlocking responsibility—how he voted. Wouldn't that be —put him in an awkward position?

THE WITNESS: Actually, your Honor, these expenditures were made through the association, but obviously we were contributors to that.

THE COURT: All right. Go ahead, Mr. Clark.

Q What were some of the reasons for your opposition to that bill?

A The two principal reasons were the inequitable interest structures, and to me the requirement for our bank to be a member of the Federal Reserve System.

Q What does the Federal Reserve System have to do with this?

A Well, whether you are a mutual savings bank or not, this ties up a considerable amount of money in cash based upon the percentage of demand of time deposits which national banks are required to be members of the federal, and this is obviously—becomes a nonearning asset, this money has to be held in cash and there's a real competitive advantage to not being a member of the Federal Reserve System.

Q So I take it you would want to oppose any demand deposit bill on those grounds, is that correct?

A Unless something can be resolved which puts us on a fair and equal footing, I would.

[795] Q That would include, then, the elimination of the interest rate differentials, is that right?

A Yes.

Q And that would include the elimination of any tax benefits which some claim the mutuals have?

A Yes.

Q And that would include the elimination of the home office protection differential which would permit savings banks to branch into towns where commercial banks are headquartered?

A I hadn't thought about that.

Q That was a ground which some bankers—I don't know whether you personally—

A Gee, I can't really respond to that, Mr. Clark. Yes, I would think that branching privileges or branching regulations should be consistent.

Q So all those, as far as you are concerned, are prerequisites for your support for a demand deposit privilege on the part of savings banks, is that right?

A Yes.

Q Now, it has been established, Mr. Hawley, that your bank was quite active in de novo branching in the years past, how—what was your feeling about that policy, let's say, back in the early '60's, did you support that?

A Yes, I did.

[796] Q And did you support it up as late as 1968?

A Yes, we have continued to look for branch sites which we think could be profitable to us.

Q Now, in 1968, Mr. Hawley, you began discussions with Connecticut Bank and Trust regarding a proposed consolidation with that bank. Would you tell us your reasons, why you—why you sought that merger?

A The discussions were initiated by the Connecticut Bank and Trust Company, and, of course, with a clear indication then to me of their interest and desire to come to Fairfield County.

Q The fact that they initiated merger talks with you was an indication that they were interested in Fairfield County?

A That they wanted to become a statewide bank, the fact of the matter is that the Connecticut Bank and Trust Company, if I'm correct in this—we have eight counties in Connecticut? The Connecticut Bank and Trust Company has offices in all eight counties in the State. The Hartford National Bank has offices in seven counties of the State, and unless we can undertake to spring out of this Fairfield County of ours, they're just going to overwhelm us and dominate the State.

Q So you think it is vital to your bank that you become a statewide bank, too, is that right?

A Well, it's going to change my whole philosophy if we [797] can't do this.

Q Is that the most important factor to you right now, that you have—given this expansion by the Hartford branches, you feel CNB must become a statewide bank?

A We want to accomplish this consolidation to improve the competitive structure where we're now competing and give us the opportunity to go throughout the State. In other words, look what's happened in New Haven. In just a recent period of time, the First New Haven National Bank has gone from the biggest bank in the town to the fourth, and by the move into the City of New Haven by mergers of the Connecticut Bank and Trust, the Hartford National Bank and the merger of Union Trust and Stamford—and the Stamford Bank, Union Trust and—Union-New Haven Trust Company and the—what was the name of that Stamford bank?

Q Fairfield County.

A Fairfield County Trust.

Q Let's go back to 1968, of course, at that point the Hartford banks were not operating in Fairfield County, they were not operating in New Haven County, so those conditions didn't exist then, what were your reasons for talking merger with CBT then?

A Well, I felt it was a reasonable thing to consider because we were seeing then this trend toward the growth of [798] business in the State of Connecticut and the needs for larger and more sophisticated and improved services.

Q Were you suffering from inroads from the New York banks at that time?

A The New York banks were active, very active in business solicitation here.

Q And did the Hartford bank express any fear of the inroads of New York banks as well?

A I don't specifically recall conversation to that effect, but I would suspect so.

Q Does it appear, however, that the Hartford bank has suffered because of their inability to acquire another large bank in Fairfield County?

A I don't know what you mean by suffer. They now

have gotten themselves established in Fairfield County and are working awfully hard to develop business.

Q And so they are a vigorous competitor, are they not, in Fairfield County?

A Very.

Q And how did they come into Fairfield County, then, Mr. Hawley, after the failed to acquire your bank?

A Let's see. I think the Hartford National Bank, I believe, were first when they acquired the Lincoln Bank in Stamford, then the Connecticut Bank and Trust Company acquired the [799] Columbus Industrial Bank in Bridgeport—and—

Q That was, of course—

A —and immediately did the smart thing by taking it from a rather remote location on the east side and bringing it right down in the center of Bridgeport.

Q Have they established de novo offices in this area?

A Oh, yes, they have established de novo offices in towns, both banks.

Q What towns?

A Connecticut Bank and Trust Company's in Darien, Hartford National is in Danbury, Fairfield, Ridgefield, Connecticut Bank and Trust Company has also acquired through its holding company the Fairfield County National Bank in Norwalk, which is not a unit bank, but a bank with branches.

Q What are the approximate total deposits of that bank?

A Of Fairfield County?

Q Yes.

A Gee, it's a guess.

Q Rather small, in the twelve, thirteen—

A Yeah, I'd say twelve million.

Q Are you experiencing significant competition from these banks through their de novo offices?

A I wouldn't say it is yet significant, but it is developing.

[800] Q And you expect it to develop further, I take it?

A Sure will.

Q Did you think at the time you were talking merger with CBT that there was potential competition between you and CBT?

A Not initially, no.

Q Why not?

A Well, we were just a regional bank down here in Fairfield County.

Q And CBT was a regional bank in—

A Yeah, we—

Q —Hartford?

A —our closest areas was some distance apart, up in the central part of the State.

Q You didn't consider then that there was much of a chance that you and CBT, if you didn't merge, would come into greater competition with each other, did you?

A Not immediately, but, obviously, there was—there was—we had been expansion minded, and so were they.

Q In your application for permission to merge with CBT, you stated, "Because of the legal and practical limitations on branching imposed by Connecticut's home protection office law, neither CB or CN"—I take it that's Connecticut National—"could create such a large statewide bank [801] except through affiliation with a large bank in the other service area, neither CBT or CN is a potential competitor with the other through de novo branching."

That was your opinion at the time, wasn't it, Mr. Hawley?

A Uh-huh.

Q And you said also where in the application, "Rather, the facts clearly establish that both banks can expand effectively by de novo branching only in their present service areas and not beyond, and there's no significant possibility that de novo branching could result in a material amount of competition between CBT and CN in the foreseeable future, or that de novo branching would provide a means of achieving for the Connecticut community the benefits of the proposed consolidation."

That was your view at that time, was it, Mr. Hawley?

A Yes, it is certainly not true now as far as CBT is concerned.

Q Yes, that's true.

MR. CLARK: I'd like to have this marked as Plaintiff's Exhibit—I don't remember the—

MR. REYCRAFT: Are you going to give us a number?

MR. CLARK: I don't have it.

THE CLERK: The last one appears to be 124. This [802] would be 125.

(Plaintiff's Exhibit 125 was marked for identification.)

MR. CLARK: This is a portion of the application of Connecticut National and CBT, entitled: The Substantial Benefits of the Proposed Consolidation Cannot be Achieved Effectively in any other Way.

THE COURT: Whatever happened to that application? What's the history?

MR. CLARK: Oh, I'm sorry, your Honor, it was approved by the Comptroller of the Currency. The Department of Justice filed suit under the antitrust laws and the banks abandoned their plans to merge.

THE COURT: Thank you.

Q Now, after you abandoned your plans to merge, Mr. Hawley, what decisions did your bank make about its future?

A The fact that the plan to not pursue the merger took place, it was very clear in my mind that this was not the end of the interests of the two Hartford banks in Fairfield County, either through other merger or de novo, so obviously I started thinking about this, and after the acquisition of the Lincoln Bank in Stamford by the Hartford National, we in 1970 acquired the Atlantic National Bank in Hartford—I mean—excuse me—in Stamford, and subsequently commenced discussions with the—[803] with the Union-New Haven Trust Company—First New Haven National Bank about this merger.

Q So it was immediately following your failure to merge with CBT, your acquisition of Atlantic and immediately following your acquisition of Atlantic, your discussions with First New Haven, is that right?

A Yes, I guess the timing there speaks for itself, we abandoned that project in 1969 and the effective date of

the Atlantic National Bank merger was April 30th of 1970, and I believe the record shows that I first talked with Frank Chadwick in—was it July of '71? I believe it was July of '71.

Q I think it was July of '70.

A July of '70.

Q Yes.

A Yes.

Q How much of a premium did you pay for Atlantic?

A Let's see. The book value of the bank was something over a million dollars, and we paid in stock the equivalent at that particular market price of two million eight. We exchanged 140,000 shares at twenty.

Q A million eight premium for Atlantic?

A Correct.

Q That's pretty substantial, is it not?

A It's a good premium.

[804] Q You were willing to pay it, of course, you were. Why?

A Well, I'll tell you why we did it. Because it was more than just a toehold entry, they had four very fine locations in Stamford, and Stamford is a pretty important banking center, and we wanted to have an opportunity to compete in Stamford.

Q And it was worth at least a milion eight to you in premium to achieve that opportunity, is that right?

A We'll make up the dilution in—let's see. Certainly, within five years.

[805] Q So, following that, then, you began your discussion with First New Haven. Since they began you thought seriously regarding any alternative means of expansion for Connecticut National Bank?

A Since then?

Q Yes, since your discussion with First New Haven, have you thought seriously about any other means—

A No, I have just been concentrating on this.

Q It's taken up most of your thought and energies? Mr. Hawley, you testified yesterday that as far as you were concerned there were fewer and fewer banking —branching opportunities in Fairfield County, am I correct?

A Yes.

Q When did you come to that conclusion?

A In the last year and a half or two years. When I saw what had happened and, as I said, when I mentioned to my shareholders at our meeting last March what has taken place, obviously the opportunities for—for de novo branching in Fairfield County are fewer and fewer—as a matter of fact, there's only three towns—four towns in Fairfield County that we're not located.

Q I was going to ask you that. Apparently CNB does have a pretty good reputation—representation throughout the county, is that correct?

[806] A That is correct.

Q Do you know of any bank that has a better spread, so to speak?

A I think we have got the best.

Q You advertise that you cover Fairfield County like a blanket, I think I noticed?

A Gee, that's a good line; I had not seen that.

Q I think I saw that—perhaps I am wrong. So, for your bank at least, there are almost, I guess, no opportunities left in Fairfield County, is there—are there?

A That is right.

Q How do you account for the fact that other banks apparently do not agree?

A I guess they think they want to get into this market because it's so important to them.

Q It is an important market then, isn't it?

A Very.

Q And if CNB didn't have a branch in Fairfield town, would you want to put one in?

A Would I?

Q Yes.

A Yes, I would.

Q And if you didn't have a branch in Danbury, would you want to put one in?

[807] A Yes.

Q I assume the same is true for Stamford, assuming you could do that? You would want to be represented in Stamford if you—if you were not already there?

A It would depend upon whether they were an open or a closed town, I believe.

Q But at least you paid a million eight to go?

A Yes.

Q Through merger?

A Yes. In this case we got a multiple bank in terms of banking locations.

Q Do you find the New London area attractive?

A Yes, we had looked very hard at New London.

Q And you would hope that the consolidated bank at least would attempt to enter that area, is that right? What factors—features about New London do you find attractive?

A Well, it has an important sector of the state's economy, to a lesser degree, of course, than some of the other towns, but it's a town where a couple of banks are now operating well and it's—there is a modest growth, and we would like it. It has a good mix in terms of the industrial complex—and the fairly stable population.

Q Stable? Population is stable?

A Yes. It's growing a little bit now.

[803] Q It's growing a little bit? But there's sufficient attractiveness about the market for you?

A We studied it very carefully with respect to the branch.

Q How would you compare New London to New Haven as an attractive banking market?

A Well, obviously, New Haven would be more attractive than New London. It's third largest city in the state.

Q Have you thought about how you are going to enter New London as part—as a consolidated bank?

A Well, there would be a number of ways. There would be either—well, two ways, really: de novo or through a holding company.

Q How would you enter through a holding company?

A Well, we might—if—if this consolidation is permitted to take place, we might give consideration to forming a holding company.

Q And forming a new bank in New London and branching via that bank?

A Correct.

Q But you have not really made your decision as to how you are going to do that, have you?

A No, I haven't, I have to take first things first in the priorities.

[809] Q Sure, and you haven't sat down and decided how much you are willing to spend or how much it's going to be required to spend to enter New London?

A No.

Q I assume the same is true for Hartford?

A That is correct.

Q Which you also spoke of?

A That is correct.

Q Hartford is also a very attractive market for an outsider, isn't it?

A It would be for us, yes.

MR. CLARK: Your Honor, I have just about reached a break—I mean I have a lot more, but if you want to—

THE COURT: Well if we could have finished with Mr. Hawley say, in ten or fifteen minutes, we could continue, but if you think it's going to go beyond—do you have some redirect as of now?

MR. REYCRAFT: You mean at this moment—I would just as soon wait, your Honor—I will have when Mr. Clark is through.

THE COURT: You will?

MR. REYCRAFT: Yes.

THE COURT: So there's no way we can finish, so [810] we'll recess. As you know gentlemen, as a result of the national holiday the Monday calendar becomes the Tuesday calendar in New Haven, so I will not be back to Bridgeport until Wednesday morning at 10:30 a.m. Have a good weekend.

(Whereupon, the Court was adjourned at 1:00 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 14,583

UNITED STATES OF AMERICA, PLAINTIFF

versus

THE CONNECTICUT NATIONAL BANK and THE FIRST NEW HAVEN NATIONAL BANK, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

United States Court House
915 Lafayette Boulevard
Bridgeport, Connecticut
October 25th, 1972

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

[813] Appearances:

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By: CHARLES H. McENERNEY, JR., Trial Attorney
FORD BARRETT, Trial Attorney

[814] THE COURT: All right, are the parties ready to proceed?

MR. CLARK: Yes, your Honor.

THE COURT: Very well.

ALEXANDER HAWLEY, having been previously been duly sworn, resumed and testified further as follows:

THE CLERK: Mr. Hawley, you have been sworn, you may be seated, you are still under oath, of course.

THE WITNESS: Before we commence, your Honor—

THE COURT: Yes?

THE WITNESS: —could I reply to a couple of questions that I was not able to answer on Friday?

THE COURT: Certainly.

THE WITNESS: All right. The question was—Mr. Clark asked me about our installment paper personal loans which were handled indirectly through a dealer, and I would like to just give you those figures.

Of the entire portfolio, 26% of our installment loans are indirect paper; and the other thing I wanted to mention was—I think I stated that the premium which we paid for the Atlantic National Bank in Stamford was a million, eight; the actual figure is a million, two.

CROSS EXAMINATION CONTINUED

BY MR. CLARK:

Q Is the remainder of your installment paper, then, loans which are negotiated directly with a borrower?

A Yes.

Q Those people come into the bank, do they?

A Yes.

Q Are these borrowers, any of them—referred to you through dealers, automobile dealers or other equipment dealers of that kind?

A Well, in the case of the indirect paper, the merchant or the dealer have the forms on premises, and initiate the contract. Otherwise, they come into a branch or the main office and make an application.

Q Do any of your direct loans include loans which were initiated by the dealer but which were consummated in your bank or at a branch?

A Well, the credit is checked in the main office on all loans, in other words, the—whether the paper originates with a dealer or not, the loan is made dependent upon the credit review by the bank itself.

Q You testified last week that you are now competing [816] with both Hartford banks?

A Yes.

Q And you testified that this has been of rather recent origin, am I correct?

A Yes, noticeably, measurably, yes.

Q Since—what was the thing that brought about this competition with the Hartford banks?

A Their entry into Fairfield County.

Q And so before that—that entry, then, you weren't competing with them to any substantial degree, were you?

A No.

Q You weren't competing for the same customers, I take it, that they were?

A Well, I'm sure they had some business in our—in our area.

Q But it wasn't substantial, is that what you are saying?

A No.

Q And does that hold true even for the largest accounts that are in your area?

A I presume so, yes.

Q So up until that point, at least, you were competing, except for perhaps a few customers for different—different business, is that right?

[817] A We were competing in our own service area with existing banks in our service area.

Q And they were competing with other banks in other areas in which they were located, is that correct?

A Right.

Q So they grew, I guess, by going after their customers, and you grew by going after yours, is that essentially correct?

A Yes.

Q Now, so—at least up until the point that they entered your service area, their growth was not at the expense of yours, was it?

A No.

Q But I take it that you do now fear that that will be the case after their entry?

A There's no question of it in our minds.

Q Now, other than this merger which you propose to consummate, what has Connecticut National Bank—what steps have you taken to meet this new competition from the Hartford banks?

A Well, retaining the business the bank presently has I consider is the most important function. We have redoubled, perhaps, our efforts with the customers we have in our banking area in view of the fact that the Hartford banks are in here and now actively calling over these accounts. The fact that they're here, as I have indicated, is considered to us to be a [818] real threat to our business.

Q Have you expanded any of the services that you offer as a result of the Hartford banks' entry?

A Well, we've tried to in a very, I would say, small way. We realize there are some services that they are offering down here which we aren't prepared to offer.

Q And you have made some changes, haven't you, in the organization of your bank in the last couple of years?

A From an organization point of view?

Q Yes.

A Yes.

Q Would you describe some of those?

A Well, I established nine divisions, all reporting to me, in different areas of our banking business.

Q Can you name them?

A Well, I have the operations division, the controller's division, the trust division, the retail banking division, the corporate banking division, the marketing division, the administrative division.

Q Tell us more about the corporate banking division, how that's organized?

A This is organized—we have for many years had a policy in our bank of calling on—we used the word "corporate" here somewhat loosely, but calling on accounts of a certain [819] average size balance and over, and this is the responsibility of the corporate division in the areas where we have branches where they're located.

Q How many people are presently employed in your corporate division?

A I believe it's six.

Q And you have people—

A See, they're regionalized.

Q I see.

A In other words, the Stamford region and the Norwalk region and the Danbury region. Of course, the Bridgeport region and the Valley area.

Q Why did you set up those regions?

A For efficiency. We wanted men in the area who knew the businesses, become familiar with the accounts.

Q What were the criteria that you used to establish those regions?

A Criteria? We thought it was the reasonable geographic breakdown of the bank's entire service area.

[820] BY MR. CLARK:

Q Did you create these divisions around more substantial towns in your service area? I mean was that one of the reasons.

A Basically, yes. You see, we have an area supervisor for all of these regions, who is responsible for the operations of the branches in those areas, that comes under the retail banking division, but the corporate division are the men who make the corporate calls in those areas.

Q Do your branch managers also make corporate calls?

A Fairly infrequently, because of the—they're so busy running the branches.

Q Do your employees in the corporate division then spend all their time making these corporate calls?

A Yes, essentially.

Q What firms do they call on?

A Well, they call on—on all firms, as I say, over a certain size balance relationship with us, and then they would call on, in our service area, prospective accounts.

Q Did you have this comprehensive calling program before you established the corporate division?

A Yes, we've always had it, in—not—we hope it's more effectively and efficiently organized now, but calling on our business accounts has been a long established pratice [821] with us.

Q Have you also established international banking department in your bank recently?

A Well, we have a fellow whom we have given some basic training to in some of the terminology and practices of corporate banking, but we don't have a corporate banking department as such.

Q You mean international?

A I mean international—excuse me.

Q You do not have a separate department, but it is within your corporate division, is it not?

A Right.

Q I am reading from an article which you wrote for the Connecticut Business Journal on July 18th, in which you say, "We have expanded our efforts in the international banking field on behalf of those businessmen in the Southern Connecticut area who are now or considering becoming engaged in international trade. An international department with the bank's corporate banking

division has been established to assist customers with their international financial needs."

Is this a recent development?

A We had nothing at all, and this was just a—we were making a report on—we were making a start in this area.

[822] Q You state, "A notable example of our efforts in this area is our assistance in promoting and arranging the export of a sizable amount of machine tools to Yugoslavia and the USSR." Is this something which you recently did for one of your customers?

A If I said so, we did, yes.

Q You have not done that in the past to any great extent?

A No.

Q You also say, "Leasing is another vehicle we have added in this area during the past year, giving our customers another financing alternative."

What are you referring to when you are talking about leasing?

A We have set up recently a small leasing department which, of course, involves the ownership of equipment and leasing it to a manufacturer on premises.

Q Your bank actually purchased the equipment, and then leases it?

A Well, we have an arrangement on this.

Q How many people have you hired in order to begin this?

A There's one person in this.

Q Where did you hire him from?

A He had been with our installment loan department.

[823] He was an employee—he was an employee of the bank.

Q You did not hire anyone, then?

A No.

Q Has your bank expanded the amount of financing of construction equipment which it does in your area?

A No, we have—we've been in the business in our time pay department, and there hasn't been any emphasis placed here.

Q You have been active, have you not, in that field?

A Yes.

Q Has your bank recently begun the financing of environmental protection equipment, making loans related to this field?

A Not to my knowledge, Mr. Clark.

Q In your article you state, "Other areas in which we have made a significant start and have dedicated ourselves to an important role are the financing of environmental protection equipment and in the financing of minority-owned business enterprises."

Don't you recall what you were referring to?

A We did one—one minority-owned business deal with a major oil company.

Q And—

A I don't recall that environmental matter, but I'll [824] look it up and get back to you with it.

Q Your bank is engaged, is it not, in the process of substantially enlarging its headquarters building here?

A Yes, we are.

Q How much are you spending?

A The construction contract is something just under three and a half million. This involves the construction of the new building on some property immediately adjacent to it on the south side, which we're going to integrate into our present building, and a major remodeling of the present head office building.

Q Why did you feel that you needed to spend that amount of money to enlarge your facilities?

A I didn't wish we had to spend that much money. It was a shock to me, but we several years ago developed a real need for space. We had a critical space program—space problem, and we were able to buy the building next door to us to use for this purpose, but we were terribly overcrowded in our present main office building and needed the space.

Q But you felt, did you, that the expansion was worth it to your bank, three and a half million dollars was worth it in terms of the—

A Well, we considered many alternatives, but the [825] fact was that it became very clear to us that this particular part of the city is the financial center of Bridgeport. Both savings banks had made—undergone

major remodelings, one commercial bank is presently under a major remodeling and a third commercial bank is moving out of this area into a new building; so it became apparent to us that this is where the financial center of the area was.

Q Did you make any estimates as to the amount of additional income that your bank would receive as a result of this building program?

A No.

Q Would you have any notion today whether it will be a good and profitable step for your bank to spend this money?

A We hope it will permit us to operate more efficiently.

Q You consider it, then, to be speculative.

Last week you mentioned several large corporations, Mr. Hawley, who presently borrow money well in excess of your loan limits.

Are these all customers of your bank?

A No.

Q I take it you would like them to be?

A Yes.

Q How many of them are now customers of your bank?

[826] A Very few of them.

Q Well, very few. That is all I—I do not care about a specific number.

A Okay.

Q I take it, however, if they were your customers, you would loan them money up to your lending limit, whether it be prudent or legal?

A Yes.

Q Do you know whether you could satisfy any one of these customers completely with the loan limit that you would have as a result of this consolidation?

A I don't believe we could completely.

Q Most of these customers are large corporations that bank all over the country?

A Yes.

Q They would have loan requirements of several million dollars, most of them?

A Yes.

Q You do not know, do you, whether or not any one of those customers would give up any banking relationships that he now has if your bank and First New Haven merged?

A There's a possibility of this.

Q Why do you believe there is a possibility?

A I figure if we can offer a lending limit double [827] our present size in many cases the company would avail themselves of this and it might eliminate another relationship.

Q Have any of these companies told you that?

A No.

Q I take it, in any event, if you could, you would loan them as much money as you could?

A Right.

Q I mean that is what you said.

Do you suppose the First New Haven has customers of this type, large customers to whom they would like to loan more money?

A I presume so.

Q I suppose you would expect your counterpart in New Haven to want to satisfy those customers, just as you want to satisfy your large customers?

A Yes.

Q So it does appear, doesn't it, if the consolidation is approved, that your bank would increase perhaps significantly the amount of money which it loans to the larger corporations?

A We would have the potential of lending considerably more. We would.

Q Yes, you would have the potential. Do you think [828] it would be a fact that you would lend more money?

A Yes, I do.

Q Can you estimate as to how much that would be?

A It's awfully hard to say. We have a number of companies that are now taking our legal limit, and I would feel without question that if we had a larger legal limit they would take that.

Q But you have not sat down and figured out—

A No.

Q —in dollars how much you would be lending.

How many customers do you have now who are taking your limit?

A We probably have—probably a dozen.

Q If those dozen then should avail themselves of two million dollars each more, you would have at the minimum 20, 24, 25 million dollars in additional loans to those customers?

A We'd just about double the present lines.

Q Your bank, I think you testified last week, has a pretty—is it low loan-to-capital ratio?

A Loans to capital? Loans—loans as a multiple to capital.

Q Right.

I take it that your loans are rather high with [829] relation to your capital; is that correct?

A I mentioned the multiple at September 30th was 8.1.

Q Is that considered about as high as you can go?

A There are other banks that are higher, but that's high.

Q Another way of measuring the extent to which a bank has loaned its money is loan deposit ratio, is it not?

A Yes.

Q Do you know approximately what your loan deposit ratio is?

A Our loan deposit ratio's about 61 percent.

Q Are you sure it is that low?

A Yes.

Q In any event, that would indicate, would it not—

A Loans to deposits is quite a different thing. Our deposit rate has been firm.

Q That would indicate also that your bank is at least at the present rate making about as many loans as it can, you know, given the resources that it has?

A We—I think we have room for some increase, because cranked into this multiple is also an analysis of the—of the quality of the loans.

Q I do not understand. What—

A Well, the quality of a loan portfolio is very [830]

significant, and we have—we're conservative in our lending, and relatively so, and we—we know that our—the general quality of our loans is good, and this is meaningful with respect to this multiple of loans to capital.

Q Did your bank have a compensating balance requirement for—

A We try to have one.

Q What is it?

A 10 percent without a borrowing and 15 with a borrowing.

Q 10 percent of the line?

A Right.

Q And 15 when not borrowing?

THE COURT: A concrete example of that would be if the line of credit—are you talking line of credit?

THE WITNESS: Yes, sir.

THE COURT: —is $50,000 to a particular small businessman?

THE WITNESS: Well, he's probably borrowing, your Honor. Take a finance company. A finance company has a million-dollar line. There would be a balance of 10 percent not borrowing, 15 percent when they're borrowing.

[831] BY MR. CLARK:

Q So these larger corporations typically hold more in loans; their loans typically exceed their deposits by a substantial amount, don't they?

A Yes.

Q Does Connecticut National Bank presently offer municipal financing services?

A We do in a modest way. We have one man who is knowledgeable in municipal financing matters and works as he can with the towns where we have branch offices.

Q How long have you offered these services?

A Oh, over five years.

Q What factors led you to make your decision five years ago to begin offering the service?

A Well, this officer became keenly interested in municipal business and persuaded me it was something we should devote a little time to.

Q Did you have to hire anybody to augment him in terms of—

A He has a staff assisting him of two men and I believe two girls.

Q Would these people—

A Because, you see, he also takes care of the bank's portfolio. This isn't just the municipal work; he's also [832] responsible for the portfolio. Basically he's one man.

Q You have testified that you wish to expand your municipal financing services?

A Yes, we would.

Q Have you made any studies as to how much it would cost you to do that?

A No. All I know is that the two Hartford banks have a quarter of a billion dollars in this and we've got fifty million, so they dominate it, and we want to work on it.

Q But you have made no studies as to how much it is going to cost you to augment your staff and to improve your services, have you?

A No, I have not.

Q You do not know how many people you would have to hire in order to improve your services?

A No, I couldn't answer that specifically, no.

Q Have you considered the additional expenses in terms of space or clerical workers which an enlarged municipal—

A I'm aware of the fact that it would take additional space and personnel.

Q Have you attempted to estimate or make market surveys which would provide you with some idea of the additional income which your bank would receive if you [833] augmented your municipal financing department?

A No, but I'm sure we could relate this to the profitability of the department at the present time.

Q You have not done that?

A No.

Q You do not know, for example, how many customers?

A What contribution it would make to earnings, no.

Q And you do not know how many customers you would expect to gain if you added this service?

A Well, we would have an opportunity to solicit the businesses of a number of towns which we're not doing at the present time.

Q You are not soliciting the business—

A The towns where we're not now.

Q You do not have branches?

A Correct.

Q But you are soliciting the business of every town in which you are operating branches, am I correct?

A Yes.

Q Did you make estimates of whether or not this augmented municipal financing department would be profitable to your bank?

A My present judgment is based upon what's happened in the past, is that it would be profitable.

[834] Q You also mentioned computer services.

Your bank now, of course, does operate in this field, doesn't it?

A Yes, we do some computer services.

Q Would you describe the equipment which you have?

A We have IBM 370, third generation.

Q What is the approximate cost of such a piece of equipment?

A We lease it.

Q Is that the way it is usually done?

A Yes.

Q Have you made any attempts to analyze the additional expense which would be required to augment your computer services which you now offer?

A No, I haven't.

Q Have you made any market surveys or studies to determine whether or not there is a demand for any additional computer services?

A We do feel there is a demand for additional computer service we presently don't offer.

Q What leads you to make that statement?

A Remarks that have been made to some of my officers who have been out calling in the field.

Q What have those remarks been?

[835] A Well, this is the kind of thing we want to do for small businesses. We want to set up a financial counseling system for small companies to help them, which is not presently being done, which involves certain computer application we don't have now. We want to do forecasting profit planning, cash flow forecasting, and we think there's quite a market here with small business companies.

Q You think the market is substantial in this?

A Yes.

Q Do you know how many people you would have to hire in order to do—

A No. I know from what we're told we have excess capacity on our present 370. What it would mean in additional personnel or equipment I don't know.

Q You would have to acquire and use more equipment, wouldn't you?

A I don't know. As I say, I know we have some excess capacity now with our 370, to what extent I don't know.

Q I take it, once again, however, you would consider, if you added such services, that it would be profitable to your bank?

A Yes.

Q Have you had any customers come to you, Mr. Hawley, and say "I want additional computer services and if [836] I don't get them I'm going to go somewhere else"?

A I couldn't say yes to that question, but I can only repeat what I said before: My men on the road have—had inquiries made about the availability of these services, which to me would indicate that if they are available somewhere else and the—they get them and move.

Q Do you know whether or not any customers have actually left your bank because they could not obtain municipal services or computer services?

A No. I don't know.

Q Are there other banks in this area which offer such services?

A Yes. Both of the Hartford banks are doing, I'm told, certain services we're not doing.

Q Where do they provide these services? Do they have facilities here in Fairfield County that—

A I think their computer centers are upstate. I don't know exactly where they are. They're not down here.

Q Do you know whether any other banks in this area —Union Trust, for example—are offering any of these services?

A I don't know about Union Trust. There—there are some computer services down here that are offered by the commercial banks in the area, payroll preparation [837] services and accountant reconciliation services, in basic computer services, and municipal tax accounting is done by the banks down here.

Q You bank does it as well?

A Yes.

Q You testified last week relating to the agreements which you have to sell certain branch offices of your bank in the Orange-Milford-Ansonia-Derby area?

A Yes.

Q With whom are these agreements presently made?

A Is that a question I should—is it—

Q I mean who have you agreed to sell? For example, your offices in—I have forgotten exactly. You have one or two offices in Milford you are selling, don't you?

A Yes, I have an office in Milford.

Q Whom have you agreed to sell it to?

THE WITNESS: Is this something I should disclose? I'd just as soon do it.

THE COURT: Is there some problem?

MR. REYCRAFT: No objection, your Honor.

THE COURT: I will give you a chance to talk to your lawyer.

THE WITNESS: Okay.

MR. REYCRAFT: Unless you would like to [838] discuss it in recess, Mr. Hawley, there is no legal reason why you cannot do it if you want to.

THE WITNESS: All right.

A The contracts with our Milford office is with the Hartford National Bank.

Q And you have another contract with Connecticut Bank & Trust, do you not?

A The First New Haven National Bank has a contract with the Connecticut Bank & Trust Company in Derby.

Q What about the office in Orange?

A The office in Orange is under contract to a—a—an application for a new chartered bank.

Q Has that bank opened yet?

A No.

Q Why haven't they opened?

A Because they want to open with our business.

Q So they are waiting to see if they can open up with this office that already exists there, right?

A Right.

Q If they did not do that, I assume they would simply open up their own office; am I correct on that, too?

A I haven't discussed that with them. That's their decision. But our contract is with them.

THE COURT: As a practical matter, how does [839] that occur? By that I mean I am not interested in exactly what legal documents are signed as between two banks on a sale, but, as a practical matter, what happens. Do you have to get permission from the Comptroller? Do you sell the business and the other bank brings in their personnel? What exactly—

THE WITNESS: Actually, as far as our arrangement, your Honor, with—our contract with the Hartford Bank, they would have to—they purchase from us the real estate, and we transfer all the business to them subject to the application to the Comptroller of the Currency to permit them to operate a branch in the City of Milford—of—of Milford.

THE COURT: Do they have a branch there now?

THE WITNESS: No, sir.

THE COURT: These answers I know are not charged—but what does that leave you within Milford, Derby and Orange if you divest yourself of these three branches? Then what are you left with?

THE WITNESS: We're left—we'll be left with one Orange—one office in Milford, one [840] office in Orange and one office—

THE COURT: Hold it.

In Orange does the Hartford National Bank—oh, that is the new chartered bank?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: In Orange presently there's the Orange National Bank and a branch of the First New Haven National Bank.

THE COURT: Okay.

What happens in Derby?

THE WITNESS: And Derby there'll be neither bank; and there'll be one office in Ansonia. So we'll wind up with one office in Milford, one office in Orange and one office in Ansonia.

THE COURT: So I take it in Derby you just have one branch there now?

THE WITNESS: The First New Haven National Bank, your Honor. We have nothing there.

THE COURT: All right.

MR. CLARK: I might add, your Honor, that under the present agreements with these banks the transfer of the business is to be done by the depositors; that is, the transfer not be automatic. [841] It would require an affirmative act on the part of the depositors to come in and actually change their deposit from the selling bank to the buying bank, and it is our contention that this means of transfer would not be at all effective and would result in substantially less than a hundred percent—

[842] THE COURT: How will that work as a practical matter? Say I have a contract in the Milford branch of CNB, and CNB sends me a notice and says, "Look, we're selling out to Hartford National Bank," I just put that in the wastebasket or I don't pay any attention to it, and eight months later I go in to withdraw my account. Now, does CN—CNB would still handle that transaction, is that what you are telling me?

MR. CLARK: No, not the way it's set up here—yes, CNB would handle it because you are still doing business with CNB, but you are not doing business at that office because the office has been bought by Hartford National. But until you affirmatively transfer your deposits from CNB to the big bank, you are doing business with CNB

and—and to—to do business with them, of course, you would have to go to some other office, because that particular office is now operated by Hartford National.

THE COURT: So that if I didn't agree, or was careless and inadvertently didn't send in the form, when I went to the bank they would say, "Your account is now in Milford and you have to go to Milford," is that what happens?

MR. CLARK: Well, it would depend—if you [843] went to the same office that you had been doing business with, they would tell you, "Well, your—we don't have your account, you will have to go somewhere else—you will have to go to CNB and transact your business with them," I assume with any office.

MR. REYCRAFT: May I comment?

THE COURT: One other question. How about a new account that walks in off the street?

MR. CLARK: That would be different.

THE COURT: It automatically would be the purchasing bank's account?

MR. CLARK: Yes, sir.

THE COURT: Now you may comment.

MR. REYCRAFT: What Mr. Clark has stated is correct, Mr. Hawley did testify on direct examination that both banks would be agreeable after the consolidation to having these transactions done—made by acquisition under the Bank Merger Act, and under those circumstances the business of these offices would go by operation of law to the acquiring bank so that the depositor or borrower, if he showed up at that office, even if he did nothing, his business would be at that office, because similarly to the merger [844] between these two banks, the combined bank will have the business of all customers of both banks. So that if CB&T acquired one of these offices under the Bank Merger Act, all the business would be automatically transferred and Mr. Hawley has already said that the banks are willing to do it this way.

The way that Mr. Clark has described it, and I am not arguing with him, if it was simply a sale of the real

estate that was at the location, it would require an affirmative act on the part of the depositor to transfer his account, and your Honor is correct that if he were careless or threw it in a wastebasket, his account would stay with the Connecticut National Bank or the First New Haven National Bank, whosever branch it was.

THE COURT: Would these divestitures with someone like the Hartford National in any way connect the resulting bank that I'm involved in with the Hartford National Bank, except in an arm's length business transaction on sale?

MR. REYCRAFT: No, your Honor, there'd be a sale for cash, the acquiring bank would pay cash, they would get the branch and the business and it would be all over, they would be competing with each other the next [845] day.

THE COURT: No question about that at all?

MR. REYCRAFT: None whatever, your Honor.

THE COURT: There's nothing in these agreements that would have a tie-in even at that one branch other than what—

MR. REYCRAFT: I'm not sure what tie-in—I think that the bank—the consolidated bank would be willing to protect the newly chartered bank, for example, and not to solicit its old customers.

THE COURT: Frankly, I'm not concerned with the newly chartered bank.

MR. REYCRAFT: There would be no tie-ups at all between these Hartford banks, no, sir, and the consolidated bank, none whatever.

BY MR. CLARK:

Q You testified last week that you computed a figure of two and a half million dollars which you would have to spend, and to New Haven, by process of a holding company, is that the right figure?

A Yes, that was it, four offices, yes.

Q Four offices costing two and a half million dollars. When did you compute that?

A It was done by my staff.

[846] Q When was that done?

A That was done about—oh, a month or six weeks ago.

Q It was done, I assume, for the purposes of your testimony, was it?

A Yes.

Q You hadn't—you hadn't computed that figure beforehand for any reason, had you?

A No, I began to look into it when it was brought to my attention that this is the method of the holding company route.

Q What's the most that CNB ever spent for a branch up till this time?

A In a de novo branch? I suppose the biggest investment we ever made on a de novo branch would be half a million dollars.

Q Well, you testified, did you not, that it cost today about $300,000.00 to—

A Yes, but this was a very expensive building that we put in the center of Fairfield for a purpose.

Q And that was a building which you actually built and now own, is that correct?

A Yes, we bought the land, put up the building.

Q How did you compute this two and a half million dollars, then? Did you assume that it would cost $500,000.00 for—for four or five branches?

A We were thinking of the legal cost of establishing [847] the holding company, which would be substantial, and then securing the—the—helping with the organization of the new bank and then, as I say, four offices.

Q All at once? You would expect to put those up all at once?

A Well, the applications would not be filed all at once, but we would certainly want to have four offices in that New Haven market to get in there effectively.

Q You wouldn't have to do that right away, though, would you?

A No, not—not—simultaneously, no, but—

Q Did you consider—

A —it would be—in the investment you have to consider that.

Q Did you consider the possibility of leasing space? Office space?

A That's always a possibility.

Q And you—your bank does lease some of its branch space, does it not?

A Yes, we do.

Q And you heard Mr. Blackford state—testify that he's leasing his downtown office space here? Here in Bridgeport?

A Right.

[848] Q You didn't consider that, though, when you —when you computed your two and a half million dollars?

A No, that's owning the properties.

Q Did you—did you compute the number of employees that you would—that you would have in your offices in New Haven?

A No.

Q Well, you just added up what? $500,000.00 for four offices, plus—

A This would be the cost of setting up the holding company, the cost of building and equipping the offices.

Q So we're talking about maybe a half a million dollars in legal fees to set up this holding company?

A I suppose it could run that high.

Q What makes you think that it would? I mean, did you get estimates at all?

A Could we—could I get these figures from the officer who computed them?

Q Fine.

A All right.

MR. REYCRAFT: Your Honor, may I say Mr. Hawley didn't make these computations, he did—Mr. Krafchik did, and Mr. Krafchik will be testifying and explain them.

[849] THE COURT: I certainly don't expect Mr. Hawley to be the computer on this type of thing.

I assume you just have confidence in your staff and you look at the final figures?

THE WITNESS: This was figures given to me by a responsible individual on my staff.

THE COURT: Maybe a look at those figures will change Mr. Reycraft from a merging attorney to a holding company attorney.

MR. REYCRAFT: It sounded pretty good to me.

MR. CLARK: It might also persuade me.

THE COURT: To leave the Department of Justice?

MR. CLARK: To leave the Department. In fact, I think I could undercut Mr. Reycraft and still make a few dollars.

Q You testified, Mr. Hawley, regarding the capital position of your bank, have you explored the means of raising additional capital?

A I have given it rather cursory thought and discussed it only briefly.

Q You have not, in fact, contacted underwriters or other people who would be—

A No, I have not.

Q —who would help you—

[850] A No.

Q —make that decision?

By the way, did you have to apply to the Comptroller of the Currency for permission to put three and a half million dollars into your—into your home office expansion program?

A Yes, I did.

Q Why did you have to do that?

A There's a regulation of the Comptroller of the Currency which states that you cannot without his permission invest more in real estate than your capital account. By that I mean your common stock account, and we were right at that point, and there is a formula which the Comptroller uses, but it means discussing it with him, telling him your plans and getting his permission to exceed that amount.

Q And you received his—

A Yes, we did.

Q —his permission? You testified that you made a decision not to put up a branch in Oakville because of a savings bank branch also going in there?

A Yes.

Q When did you make that decision?

A When we learned that the savings bank was coming back into the area. What happened was the savings bank was there previously, they applied for relocation of the office, which they [851] succeeded in getting, and then applied again to relocate an office in Oakville. When that happened, we then abandoned our plans.

Q And how long ago was that? Just a few months?

A That was just a few months ago.

Q Mr. Hawley, you testified that you do take into account all the banks that you compete with in your area when you make your decisions on pricing and so forth?

A Yes.

Q And I guess that includes most of the large banks in this State, doesn't it?

A Yes.

Q That would include City National Bank and State National Bank and Union Trust and the Hartford banks?

A Yes.

Q Colonial Bank and Trust?

A Yes.

Q And First New Haven National Bank?

A Yes.

Q Is size a factor in determining the extent to which you consider?

A Size of the bank?

Q Yes.

A No, I think we consider the rates that are—that are being offered by all banks.

[852] Q And did you consider—

A Consider the savings banks.

Q You consider them equally, then? First New Haven is as important to you as the two Hartford banks?

A I would say that we—in our—in our rate review we study other people's rates, yes, when we set our own rates, competitively. We have to compete in the marketplace.

Q And First New Haven is one—one factor which you consider, is it not?

A We look at their loan rates.

Q And their deposit rates? They pay?

A Yes.

THE COURT: Maybe I missed something when another expert was testifying. I asked him something about that. Don't businessmen kind of shop around when it comes to rates, and if I recall his answer, he said, "Well, it's pretty hard to find out what these rates are because, as a general rules, businessmen don't tell each other."

Now, I'm not sure I buy that statement, but just let's assume that. How do you know what rates other banks are charging, when the expert who testified earlier told me that this is kind of a hard thing.

THE WITNESS: Sometimes, your Honor, we're told, [853] "Can you meet an X rate?"

THE COURT: This goes on, people come to you and to your loan officer and say, "Look, I'd like to borrow X amount of dollars," and he says, "7%." And he says, "Gee, I'm sorry, I'm going to some other bank that agreed to extend me a line of credit at six and a half," doesn't that happen?

THE WITNESS: That's right, your Honor. Yes, sir.

THE COURT: How else do you find out, is there anything that these bank—any bank—a bank has to report?

THE WITNESS: Sometimes you see them published.

THE COURT: That's what I mean. Where?

THE WITNESS: Installment loan rates are often run in ads. In fact, this is the basic way that we find out what our competition is charging.

THE COURT: Now, there are legal limits, is that correct, to these rates?

THE WITNESS: Legal limits? Yes.

THE COURT: Right? How does one find out if a bank is violating the legal limit?

THE WITNESS: I'm not sure that I know about that.

MR. REYCRAFT: The usury loans.

THE WITNESS: We don't have the usury laws here, [854] it's never come to my—

MR. BELL: We aren't subject to the usury laws, it's the manner of describing interest, but banks are exempt from the Connecticut usury statutes, so technically, I don't think there are ceilings that are imposed on these rates as a matter of law, it's as a general proposition,

it's the manner of displaying rates in the truth in lending requirements. Is that your Honor's question?

THE COURT: What I was trying to find out was when Mr. Hawley said, "Sure, we try to keep an eye on what the other banks are doing and the rates at which they lend," and so on and so forth, I was wondering if there's any publication that you look at or whether it's hearsay or whether it's kind of an informal method by which bankers get this information, only because the expert told me earlier, at least I thought I got—I got the impression from his testimony that this is kind of highly secret business.

THE WITNESS: Our commercial rates, as your Honor—as I think I mentioned earlier, are—start from the prime, and go up depending upon the type of collateral, the size of loan, the degree of risk, and installment rates are published, and ours [855] arrived at, we hope, on a competitive basis.

MR. CLARK: I have no further questions, your Honor.

THE COURT: Redirect?

MR. REYCRAFT: Your Honor, if I may at this time, I'd like to mark as Defendants' Exhibit No. 67 a document entitled: Final Judgment in Case of United States of America versus National Bank and Trust Company of Central Pennsylvania, Civil Action No. 69-2902, a consent decree approved by the Department of Justice in which nine branches of the merged banks, there were three banks involved in this merger, were divested to new entrants into geographic areas described in the final judgment.

This was entered with the consent of the Department of Justice, and the banks on December 7th of 1970. And Mr. Clark is aware of it.

MR. CLARK: Yes, your Honor, and I would interpose the same objection I have had in the past relating to this settlement issue in I simply think that this whole matter is not a proper topic of investigation at this point and to the extent that this relates to that, I think, in no—I think it is incompetent.

THE COURT: By all means. Same ruling. I'm [856] just curious, Mr. Clark, but if part of the merger agreement states that the two executive officers, or the controlling authorities, felt that if they merged, they would just close down a bank in Milford, just close it right up, would that be proper evidence before me?

MR. CLARK: I would think so, your Honor, yes.

THE COURT: What's the difference if the same authorities, same executive officers, say "If we merge, we're going to sell Milford, open up in New Milford, close down in Orange, open up in Hartford"? I mean, why is that not different than a compromise?

MR. CLARK: Well, you see—let me say this, first of all, this is not part of the merger agreement.

THE COURT: I thought the three contracts were?

MR. CLARK: No, your Honor.

MR. REYCRAFT: There is a merger agreement which does not include the contracts, but these are binding contracts which we are submitting. We—we have made them known to the Comptroller's office and we have made what we think is a commitment that we can't get out of that we will do what we say we are going to do. This is part of the entire transaction in our view, your Honor, even though it is not on the same piece of paper that says the terms of the [857] merger.

THE COURT: Well, the same ruling. Later on if I decide that I erroneously allowed this evidence in, I'll mention it in my opinion. But why don't I take everything, it's easier to exclude things later than to call the attorneys together and ask them to submit them. so the objection is overruled on the conditions stated subject to connection, and we'll proceed.

MR. REYCRAFT: Your Honor, I'd like to—also comment that on this judgment—that—along the lines of the discussion we had earlier, about sale of real estate or applications under the Bank Merger Act. The nine branches which are subject to the—were divested under the final judgment in the National Central case were done by sale of real estate, not by Bank Merger Act applications, and, therefore, under those divestitures it was

necessary for the customer to ask to have his account transferred.

We are proposing to go beyond that, to have them done under the Bank Merger Act so that the business will go by operation of law.

There is also, your Honor, a letter which the Department of Justice sent to the Comptroller of the [858] Currency on March 29 of 1972 with regard to the proposed merger of Carolina Bank of Commerce in Eden, North Carolina and the North Carolina National Bank of Charlotte, North Carolina, and the Department of Justice in submitting its report on the competitive effects of that merger took into account the fact that the merging banks proposed to divest one of their branches to another bank, and on Page 3 of that letter the Department of Justice's letter states, "NCNB's Burlington offices would appear to compete more directly with the Carolina Bank branch at Elon College." However, the application states that NCNB has entered into an agreement with the Bank of North Carolina N.A. for the purchase of the physical assets of this branch, if this agreement is consummated, BNC will in part replace Carolina Bank as a competitive alternative in the Burlington area."

So the Antitrust Division took into account a divestiture of branch in the merger situation itself, it seems to me for Mr. Clark to be taking a different position is inconsistent with a letter dated March 29 of 1972.

THE COURT: Well, I don't think Mr. Clark is saying that the Antitrust Division hasn't compromised [859] cases because of these agreements to transfer and to sell, but he's saying it is not proper for a Court to in considering one aspect of the antitrust case. I mean you don't deny the Department of Justice has probably compromised many cases on the basis of divestitures?

MR. CLARK: Yes, sir, and that's precisely my point. That this whole subject of divestiture is not part of the agreement, it hasn't been done, the banks still operate all these offices and that I think that—that the merger agreement ought to be considered as it is, if it is found to be illegal for whatever reason, then it seems to me it would be proper to consider what, if anything—

THE COURT: Yes, I understand your position. But the record will disclose the reasons for me overruling your objections which may later prove to be valid, but for the time being the objection is overruled and it may come in as a full exhibit.

MR. REYCRAFT: May I have this marked as D-68. That letter, by the way, your Honor, has to do with a merger on which the Department of Justice did not file a complaint and which was not, therefore, settled and in which it appears to have taken into [860] account in its own analysis of the competitive effects the divestiture of the branch.

REDIRECT EXAMINATION

BY MR. REYCRAFT:

Q Mr. Hawley, Mr. Clark asked you some question about a portion of the application which was filed in the proposed merger with Connecticut Bank and Trust Company, do you recall that?

A Yes.

Q One of the statements in that portion of the application, which is Plaintiff's Exhibit No. 125, is the following: "Because of the legal and practical limitations on branching imposed by Connecticut's home office protection law, CBT or CN, Connecticut National, that is, could create such a large statewide bank, except through an affiliation in a large bank in the other's service area, neither CBT nor CN is a potential competitor of the other through de novo branching."

Are those statements still true, in your opinion?

A That we compete now?

Q That neither CBT nor CN is a potential competitor of the other through de novo branching?

A Right.

Q And the statement is also made that, "No bank with a home office in New Haven has established a branch in either [861] Hartford County or Fairfield County," and is that still true?

A That's true.

Q And the application—

THE COURT: Is CBT—has its home office in Hartford?

THE WITNESS: Both Hartford National Bank and CBT have their head offices in Hartford.

THE COURT: Go ahead.

Q The application also states: "In actual fact, neither bank has ever seriously considered branching de novo in the other bank's service area."

Is that still true of Connecticut National as far as branching de novo into the Hartford areas concerned?

A It's still true.

Q Mr. Hawley, you also were asked questions about the growth in savings deposits by your bank after the rate was decreased. Do you recall that testimony?

A Yes, I do.

Q Did you testify that the growth was at a fairly flat level after the decrease?

A Yes.

Q What would a normal increase in savings deposits be for your bank?

A Had we been at the four and a half percent rate?

[862] Q Yes, sir.

A We would have had an increase running somewhere—about 5% a year.

Q Do you have an opinion as to—as to where this business went?

A Well, I presume it went to savings banks and commercial banks that were paying—there were some banks still at four and a half.

Q Okay. Mr. Hawley, have you had any customer come to you recently and give you a—anything like a take it or leave it proposition with respect to a loan, say, "If you won't do it for me for a certain price, I can get it someplace else for a certain price"?

A Yes.

Q Can you describe that situation?

A I had a case of a—very recently, this involved a borrower who came to see me who confronted me with a rate that was better than the rate we would normally

make that kind of loan, on that kind of loan. Sizeable loan.

Q And what happened to the business?

A I had to cut the rate to get the loan.

Q Mr. Clark also asked you some questions about the capacity of the consolidated bank to increase its loans to some of these larger corporate customers that you mentioned, would [863] that—would any such increase in your loans to larger customers result in any decrease in the availability of lendable funds to small businesses or small borrowers?

A No, it would not.

Q How do you explain that?

A Well, because basically the large percentage of our loans are to small businesses.

Q Do you have any figures showing the breakdowns of your average—average sizes of your loans?

A We have—I took the 100 largest loans in the bank, and they run some forty-seven million dollars, which would be an average of what? Four hundred and seventy thousand dollars. The balance of the commercial loans in our bank averaged about sixty-eight hundred.

Q If you take out those 100 loans, then, all of the rest of the loans put together average what, did you say?

A $6800.00.

Q Can you explain why, if you lend more money to a large corporation, that doesn't reduce the amount of lendable funds available to smaller borrowers?

A Well, in the consolidated bank, we would have the—the lendable funds to meet the commitments we would make.

Q Would you expect that large corporate borrowers would leave on deposit with your bank more funds than they now do?

[864] A They would have to.

Q Would this—

A Because we would have a stronger relationship with them.

Q Would this source of funds, in your opinion, make up for the increase in loans?

A Yes, you see, our loan deposit ratio now is 61%, which gives us a potential of lending limit increase here.

Q Are there banks in the area which have higher loan to deposit ratios than 60%?

A There certainly are.

Q Can you give me some examples?

A Yes. Union Trust Company has higher lending limits, most of the smaller banks have higher lending limit—I mean higher ratios, not limits—I believe that both Hartford banks have a higher ratio of loans to deposits than we.

MR. REYCRAFT: I have no further questions.

THE COURT: Recross.

RECROSS EXAMINATION

BY MR. CLARK:

Q Mr. Hawley, how do you compute your loan-deposit ratio?

A We take the dollar amount of our loans and divide it by the total deposits.

Q Total loans divided by total deposits?

A Right.

[865] Q And you say that's now 60%?

A About 61%.

MR. CLARK: That's all, thank you.

BY THE COURT:

Q Mr. Hawley, I gather from your testimony that you prefer to talk in terms of service areas rather than SMSA's?

A Yes, your Honor.

Q And I assume most bankers that you know do the same thing?

A I believe—yes, sir.

Q All right. Now, I'm going to ask this question, you don't have to answer it until you have had time to think about it. You can even send me the answer through your attorney, because it is something you might slip up on without really thinking about.

But, from your point of view, not from what the charts show, as a businessman, banker, could you list for me all

the towns in Connecticut which you consider part of your bank's service area? In other words, I assume you would consider a service area where you have a branch?

A Yes, sir.

Q But as a practical matter you may have a branch, say, in East Haven, which you don't, so that's why I'm using it, but you may say, "Well, our service area includes Branford," [866] so if I looked at a chart, it would show a bank in East Haven, but it wouldn't necessarily give me your opinion as to whether part of your service area was Branford. Do you see what I mean?

A Yes.

Q All right. Now, what I would like you to do is set forth for me all the towns, not only in which you have branches, but in which you—you consider that you do service?

A In other words, there might be an overlap somewhere, is this what you are getting at, your Honor?

Q Right, right. Like you may have a bank in—

A In other words—

Q —Washington, Connecticut, and you may say, "Yes, we have a branch there, but our service area includes Woodbury, Southbury, Kent," do you see what I mean? In other words, from your point of view, not from what the charts show, I would like to know what you consider to be the service area of your bank, is that something you think you can answer for me?

A Yes, sir. May I get that for you?

Q Yes. I know you would want—perhaps want to think about it. And I will even accept a letter on that.

A The question is clear—

MR. REYCRAFT: Yes, I understand it. I might say, your Honor, D-39 shows the office towns of Connecticut National Bank on a map, and I understand [867] your Honor's question to be whether such towns as Easton and Redding and Weston and Wilton in which there are not offices he considers part of his service area nevertheless?

THE COURT: Exactly, that's the question. But from his point of view as a businessman more than—

MR. REYCRAFT: His answer?

THE COURT: Yes, but naturally I know you would like to look at a map and maybe take a day or two to get me that.

THE WITNESS: All right, your Honor.

THE COURT: I suggest—just not bring Mr. Hawley back, unless he's going to be here, just put that in writing, just list the towns and if either attorney wants to recall him to cross examine him or to examine him on his written reply, we can do that at his convenience some other time.

MR. REYCRAFT: He'll be available.

THE COURT: All right. Thank you, Mr. Hawley. You are excused.

(Witness excused.)

THE COURT: We might as well recess for lunch until 2:15.)

(Recess taken for lunch.)